S. Hrg. 101-1060

MISCELLANEOUS RECLAMATION LEGISLATION

HEARING

BEFORE THE

SUBCOMMITTEE ON WATER AND POWER

OF THE

COMMITTEE ON ENERGY AND NATURAL RESOURCES UNITED STATES SENATE

ONE HUNDRED FIRST CONGRESS

SECOND SESSION

ON

H.R 3694 S. 1118 S. 1932

S. 1590 S. 2716

JULY 24, 1990

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MISCELLANEOUS RECLAMATION LEGISLATION

TUESDAY, JULY 24, 1990

U.S. SENATE,
SUBCOMMITTEE ON WATER AND POWER,
COMMITTEE ON ENERGY AND NATURAL RESOURCES,
Washington, DC.

The subcommittee met, pursuant to notice, at 2:30 p.m. in room SD-366, Dirksen Senate Office Building, Hon. Bill Bradley, presiding.

OPENING STATEMENT OF HON. BILL BRADLEY, U.S. SENATOR FROM NEW JERSEY

Senator BRADLEY. The subcommittee will come to order. On behalf of the subcommittee, I'd like to welcome each of our witnesses, particularly those who have traveled here from New Mexico and Idaho and Colorado. You have come a long way and the subcommittee appreciates your willingness to offer your testimony.

This afternoon the Subcommittee on Water and Power will consider four bills involving reclamation project facilities in Idaho, Colorado, and New Mexico, and a fifth bill which will have application to all 17 reclamation States. The subcommittee will hear testimony on the five bills in the following order:

First, H.R. 3694, a bill passed by the House, which would authorize the Secretary of Interior to reimburse the developer of an Idaho hydroelectric project for $1 million of costs it expects to bear in complying with the fish and wildlife conditions imposed on its license by FERC and the State of Idaho;

Second, S. 1118, a bill sponsored by Senators Armstrong and Wirth, which will provide for the transfer of the Platoro Reservoir to the Conejos Water Conservancy District;

Third, S. 1932, a bill sponsored by two of my colleagues on this committee, Senators Domenici and Bingaman, which would clarify Congressional intent with regard to the Secretary's authority to transfer a certain lake to the Vermejo Conservancy District;

And fourth, S. 1590, a bill also sponsored by Senators Bingaman and Domenici, to transfer certain rights-of-way and other property now owned by the Bureau of Reclamation to the Elephant Butte Irrigation District;

And fifth, S. 2716, a bill introduced by Senators Cranston and Wilson, to amend the Warren Act to expand the purposes for which excess storage or carrying capacity in reclamation projects may be used.

Given the number of bills before the subcommittee this afternoon and our limited time, I would hope that everyone would limit and summarize your testimony, and we will try to limit presentations to 5 minutes. Your entire written statements will be included in the record in full, and the record will be kept open for 2 weeks after the hearing for submission of additional materials.

[The prepared statements of Senators Burns, Garn, and Cranston and the texts of the bills follow:]

PREPARED STATEMENT OF HON. CONRAD BURNS, U.S. SENATOR FROM MONTANA, ON H.R. 3694

Mr. Chairman, I want to offer my strong support for H.R. 3694. This bill is necessary to allow a small local Rural Electric Cooperative to continue with the development of a hydro electric project in Island Park, Idaho.

Senator McClure and others have described the specific circumstances surrounding this project and why this bill is necessary. Because of the actions of Congress in requiring additional environmental standards be met prior to the issuance of any FERC permit the operators massed the deadline for receiving tax incentives allowed for hydro projects. These tax incentives were very important to the total financing package for the project.

The additional environmental requirements have caused a two year delay in completing the project. Without passage of this bill the project may have to be scrapped altogether. This is not a case of damning another river in the American West. It is a case of using an existing facility to provide for the electrical needs of our growing nation.

I am most interested in this project because, when completed, it will be able to provide electrical power to small communities in Montana like West Yellowstone as well as to others in Idaho and Wyoming.

Rural electrification is very important to the western United States. Projects such as this one ensure a future supply of power to rural areas without the need to continue damning our remaining rivers.

This project has met all the environmental requirements and is headed on the path to success. I strongly urge you to take action quickly on this bill and allow for this projects final completion.

Thank you.

PREPARED STATEMENT OF HON. JAKE GARN, U.S. SENATOR FROM UTAH, ON H.R. 3694

I appreciate Subcommittee Chairman Bradley scheduling this hearing on H.R. 3694. I express my continuing strong support for the legislation and the project it would impact. I hope we can follow these hearings with a prompt markup to allow sufficient time for the bill to be enacted in this Congress.

H.R. 3694 would grant equitable relief through authorization of a reimbursement by the Secretary of the Interior to the Fall River Rural Electric Cooperative for certain expenditures to meet environmental protection requirements at the Island Park Dam and Reservoir, Upper Snake River Division, Minidoka Project, Idaho and Wyoming (hereinafter referred to as the Island Park project).

The Island Park project was proceeding through the licensing process when Congress enacted reforms to the hydro relicensing procedures in 1986. That legislation intervened in the middle of the project's permitting Process and imposed new requirements on this one project alone. Specifically, the 1986 legislation banned all other hydro projects on the Henry's Fork, but singled out this project to meet new and special environmental criteria which applied to no other FERC applicant. Because these new requirements were imposed in the middle of the licensing process, the project participants had to basically start over in that process.

In summary, the project presents a special case for equitable relief because it would not have faced any serious problems except for Congress' intervention in 1986. Since that date, a vast amount of time, energy and resources have gone into approving the project by Federal and state agencies to insure that it will meet the unique environmental safeguards which Congress imposed. Much of the time, effort and resources has been expended by Bonneville Pacific Corporation of Salt Lake City, Utah. Bonneville Pacific Corporation is the primary investor in the project and has designed and will build the project. It is a leader in the alternate energy industry with significant experience in the development of alternative sources of energy, building or operating more than twenty-five projects, including cogeneration, hydro, geothermal, wind, etc.

The efforts and resources of the project participants should not be wasted simply because Congress forgot to accompany its 1986 law with an appropriate extension of financial incentives which the project would have qualified for if Congress had not intervened.

I urge prompt consideration and adoption of this legislation.

PREPARED STATEMENT OF HON. ALAN CRANSTON, U.S. SENATOR FROM CALIFORNIA, ON S. 2716

I want to thank you, Mr. Chairman, for holding this hearing and for giving prompt consideration to my bill, S. 2716, which would give cities and urban areas the opportunity to use the excess capacity available in Federal reclamation projects for the storage and conveyance of non-project water. The bill also would permit other organizations to use reclamation project facilities for the storage and conveyance of water for fish and wildlife purposes such as wildlife refuges.

This legislation is particularly important as California copes with its fourth year of drought. Across the state, water-short communities have been seeking ways to increase their water supplies, including importing water from other areas. In Santa Clara County, for example, the local water district wishes to use the Federal San Felipe Project to import supplemental water to combat the drought. Although the district was able to purchase an emergency water supply from the California Department of Water Resources for drought relief, the Bureau of Reclamation denied use of the Federal facilities to convey the water because the Warren Act does not permit such use for municipal water supplies.

Similarly, in Santa Barbara County, there is considerable interest in enlarging the Cachuma Project, a Federal facility, to store water delivered to the county by the State of California for municipal use. However, such use of the Cachuma Project could not occur without amendments to the Warren Act.

The Warren Act, passed in 1911, authorizes the storage or conveyance of non-federal irrigation water in Federal facilities if there is excess capacity. The rationale for this authorization was both pragmatic and beneficial. In many reclamation project areas, the Federal Government has built delivery and impoundment facilities which have capacities in excess of that needed for reclamation project uses alone. Moreover, in most cases, these facilities have been constructed in the most desirable locations. Absent the Warren Act, Federal reclamation project contractors who also have non-federal water rights would have to build separate storage and conveyance facilities for the non-reclamation water. The Warren Act eliminates the need to build duplicative facilities.

However, the Warren Act, as originally enacted, does not address the use of Federal reclamation facilities if the water is used for municipal, industrial, domestic or fish and wildlife purposes. This was consistent with the major uses of reclamation water at the time the Warren Act was passed. The Act now needs to be updated to enable the Secretary of the Interior to execute contracts for other common reclamation project purposes today.

I believe my amendments to the Warren Act make good sense for efficient water management. Building new dams and canals many times creates environmental problems; if existing projects are available, these impacts may be avoided. Additionally, joint use facilities can save cities money badly needed for other purposes and can provide revenues to the Federal Government to help repay the cost of the reclamation project.

Mr. Chairman, I understand there is some concern about section 3 of the bill which is intended to make the Warren Act consistent with the provisions of the Reclamation Reform Act of 1982. Section 3 is not central to the purposes of S. 2716 and I have no objections to it being dropped from the bill.

Again, S. 2716 is needed legislation. I hope you will be able to report it from Committee shortly. Thank you.

II

101st CONGRESS
1st Session

H. R. 3694

IN THE SENATE OF THE UNITED STATES

NOVEMBER 18 (legislative day, NOVEMBER 6), 1989
Received

NOVEMBER 21 (legislative day, NOVEMBER 6), 1989
Read twice and referred to the Committee on Energy and Natural Resources

---

AN ACT

To authorize reimbursement by the Secretary of the Interior of certain expenditures at the Minidoka Project, Idaho and Wyoming.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 2 of the Act of September 30, 1950 (64 Stat. 1083) is amended by—

(1) inserting at the beginning "(a)"; and

(2) inserting the following new subsection:

"(b)(1) The Secretary of the Interior is authorized to reimburse the Fall River Rural Electric Cooperative, Idaho, for expenditures incurred to meet environmental protection requirements for hydroelectric power development at the

Island Park Dam and Reservoir, Upper Snake River Division, Minidoka Project, Idaho and Wyoming. Any moneys appropriated under this section shall be placed in escrow until such time as the hydroelectric power facilities are placed in service, at which time such moneys and accumulated interest thereon shall be paid to such Cooperative. In the event the hydroelectric power facilities are not placed in service by December 31, 1992, all moneys and accumulated interest shall be returned to the Treasury.

"(2) There is authorized to be appropriated to carry out the purposes of this section the sum of $1,000,000, to remain available until expended.".

Passed the House of Representatives November 17, 1989.

Attest: DONNALD K. ANDERSON,
Clerk.

II

101ST CONGRESS
1ST SESSION

S. 1118

To provide for the transfer of the Platoro Reservoir to the Conejos Water Conservancy District of the State of Colorado, and for the protection of fish habitat on the Conejos River.

IN THE SENATE OF THE UNITED STATES

JUNE 2 (legislative day, JANUARY 3), 1989

Mr. ARMSTRONG (for himself and Mr. WIRTH) introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

---

A BILL

To provide for the transfer of the Platoro Reservoir to the Conejos Water Conservancy District of the State of Colorado, and for the protection of fish habitat on the Conejos River.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. FINDINGS AND DECLARATIONS.

The Congress finds and declares that it is in the best interest of the United States—

(1) to transfer responsibility for the implementation of the San Luis Valley Project, Conejos Division

(Platoro Reservoir) to the local water user district with repayment responsibility to the United States; and

(2) to relieve the people of the United States from further financial risk or obligation in connection with Platoro Reservoir.

SEC. 2. TRANSFER OF PLATORO RESERVOIR.

(a) IN GENERAL.—(1) The Secretary shall enter into an agreement for the transfer of the Platoro Reservoir to the Conejos Water Conservancy District, Colorado, upon the early payment of the repayment obligation of the Conejos Water Conservancy District on a lump-sum basis. The lump-sum payment for the transfer of Platoro Reservoir shall be $450,000.

(2) The lump-sum payment provided for in paragraph (1) is based upon—

(A) the present worth (advanced payment) of the scheduled annual payments to be made to the United States pursuant to the existing repayment contract between the United States and the District (Contract No. Ilr–1529) to fully satisfy the reimbursable construction cost obligation of $2,321,877, plus

(B) the fair market value of underlying lands encumbered by Platoro Reservoir and such repayment contract,

taking into account—

(i) the release of Federal obligations for operation and maintenance of the reservoir for flood control purposes;

(ii) reservations provided in section 2(b);

(iii) certain conditions on the transfer provided in section 2(c) (1), (2) and (3); and

(iv) the 50 percent sharing of the cost of maintaining a minimum stream flow provided in section 2(c)(4).

(b) TRANSFER TO DISTRICT.—Upon receipt of the payment pursuant to subsection (a), the United States shall transfer to the District, without additional consideration, all right, title, and interest in and to—

(1) all lands beneath the Platoro Dam and Reservoir up to the high water line, being at elevation of 10,042 feet M.S.L.;

(2) approximately 2 acres of land and improvements thereon at the operation and maintenance site in the townsite of Platoro, Colorado, including shop and caretaker house; and

(3) all associated structures and all project operating facilities and equipment,

excepting however—

(A) an appropriative reservation of the right to make recreation use of Platoro Reservoir, and all land underlying the high water line when such land is not inundated, so long as that use does not interfere with its use for water supply, compact and flood control; and

(B) an appropriate reservation to the effect that in the event the lands subject to this conveyance shall no longer be used for reservoir purpose title to the lands shall revert back to the United States.

(c) CONDITIONS ON TRANSFER.—The transfer under subsection (b) shall be subject to conditions imposed upon the district as follows:

(1)(A) Subject to subparagraph (B), the District shall use its best efforts to operate the reservoir in such a way as to provide that releases of bypasses from the reservoir flush out the channel of the Conejos River periodically in the spring or early summer to maintain the hydrologic regime of the river, and to provide that any releases from the reservoir contribute to even flows in the river as far as possible from October 1 to December 1 so as to be sensitive to the brown trout spawn.

(B) The operation of the reservoir by the District for water supply uses (including storage and exchange of the water rights owned by the District or its constituents), and interstate compact and flood control purposes shall be senior and paramount to the channel flushing and fishery objectives described in subparagraph (A).

(2) The District shall provide and maintain a permanent pool in Platoro Reservoir for fish, wildlife, and recreation purposes, in the amount of 1,800 acre-feet, including the initial filling of the pool and periodic replenishment of seepage and evaporation loss. If the District commits additional storage and water up to 1,200 acre-feet for the purpose of guaranteeing instream flows below the dam, the District further agrees that such additional storage and water will also be held to enhance the permanent pool unless and until needed for instream flow releases, and

(3) The District shall not use or sell any of the lands conveyed to it for private, commercial, or residential development, although the District may use the lands for reservoir or hydroelectric facilities, upon consultation with the United States Forest Service regarding the location and type of such improvements.

(4) The District shall maintain releases of water from Platoro Reservoir of at least 5 cubic feet per second during the months of October through April in order to preserve fish and wildlife habitat. The District has previously agreed with the State of Colorado to

subordinate its rights to those of the State to maintain instream flows of 40 cubic feet per second during the months of May through September.

(d) RELIEF OF RESPONSIBILITY AND LIABILITY OF THE UNITED STATES.—The transfer under subsection (b) shall relieve the United States of any and all responsibility and liability associated with operation and maintenance of the project for irrigation, safety of dams, or any other purpose except recreation with respect to the Platoro Reservoir and except for flood control administration by the Corps of Engineers, Department of the Army. All operational, maintenance and replacement responsibilities and expenses shall be the responsibility of the District.

(e) MANAGEMENT.—The Corps of Engineers, Department of the Army, shall retain authority for management of Platoro Dam and Reservoir for flood control purposes. To the extent possible, management of the Platoro Dam and Reservoir for flood control purposes shall be consistent with the water supply use of the reservoir and with the administration of the Rio Grande Compact by the Colorado State Engineer. The Corps of Engineers shall enter into a letter of understanding with the District and the Colorado State Engineer which details responsibility of each party and specifies the flood control criteria for the reservoir.

(f) OPERATION AND MAINTENANCE OF DAM.—The District agrees to operate and maintain the dam and reservoir in compliance with—

(1) the Rio Grande Compact of 1938, ratified by Congress in 1939;

(2) the letter of understanding referred to in subsection (e); and

(3) all other applicable laws and regulations whether of the State of Colorado or of the United States.

SEC. 3. DEFINITIONS.

For purposes of this Act—

(1) the term "District" means the Conejos Water Conservancy District of Colorado;

(2) the term "Platoro Reservoir" means the Platoro Dam and Reservoir Unit of the Conejos Division of the San Luis Valley Project; and

(3) the term "Secretary" means the Secretary of the Interior.

II

101st CONGRESS
1st Session

S. 1932

To amend title IV of the Act of December 19, 1980 (94 Stat. 3227) to provide further relief to the Vermejo Conservancy District from its repayment obligation for the construction, operation, and maintenance of the Vermejo reclamation project, and for other purposes.

IN THE SENATE OF THE UNITED STATES

November 20 (legislative day, November 6), 1989

Mr. Domenici (for himself and Mr. Bingaman) introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

---

A BILL

To amend title IV of the Act of December 19, 1980 (94 Stat. 3227) to provide further relief to the Vermejo Conservancy District from its repayment obligation for the construction, operation, and maintenance of the Vermejo reclamation project, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 401 of the Act of December 19, 1980, (94 Stat. 3227) is amended by striking "Transfer of project facilities to the district shall be without any additional consideration in excess of the existing repayment obligation of the district, and shall include any related lands or interest in lands acquired by the Federal Government for the project, except that any lands or interests in land, or interests in water, or other contractual arrangements which may be held by the Secretary for management of the Maxwell National Wildlife Refuge, for wildlife enhancement purposes, shall not be transferred and shall be maintained consistently with existing arrangements" and inserting in lieu thereof "Effective as of the date of the above written consent of the Vermejo Conservancy District all project facilities are hereby transferred to the District. The transfer to the district of project facilities shall be without any additional consideration in excess of the existing repayment contract of the district and shall include all related lands or interest in lands acquired by the Federal Government for the project, but shall not include any lands or interests in land, or interests in water, purchased by the Federal Government from various landowners in the district, consisting of approximately two thousand eight hundred acres, for the Maxwell Wildlife Refuge and shall not include certain contractual arrangements, namely Contract No. 14-06-500-1713 between the Bureau of Reclamation and the Bureau of Sport Fisheries and Wildlife, and concurred in by the district, dated December 5, 1969, and the lease agreement between the district and the Secretary dated January 17, 1985, and expiring January 17, 1990, for 468.38 acres under the district's Lakes 12 and 14, which contractual arrangements shall be maintained consistent with the terms thereof".

II

101st CONGRESS
1st Session

S. 1590

To transfer certain rights-of-way to the Elephant Butte Irrigation District of New Mexico, and for other purposes.

IN THE SENATE OF THE UNITED STATES

September 7 (legislative day, September 6), 1989

Mr. Bingaman introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

---

A BILL

To transfer certain rights-of-way to the Elephant Butte Irrigation District of New Mexico, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. TRANSFER.

The Secretary of the Interior is authorized to transfer to the Elephant Butte Irrigation District, New Mexico, without cost to the district, title to such easements, ditches, laterals, canals, drains, and other rights-of-way, which the United States has acquired on behalf of the project, that are used solely for the purpose of serving Elephant Butte Irrigation District lands and which the Secretary determines are necessary to enable the Elephant Butte Irrigation District to carry out operation and maintenance with respect to that portion of the Rio Grande project to be transferred. The transfer of the title to such easements, ditches, laterals, canals, drains, and other rights-of-way located in New Mexico, which the Secretary has, that are used for the purpose of jointly serving Elephant Butte Irrigation District and El Paso County Water Improvement District No. 1, may be transferred to Elephant Butte Irrigation District upon agreement by the Secretary and both districts. Any transfer under this section shall be subject to the condition that the Elephant Butte Irrigation District assumes the responsibility for operating and maintaining that portion of such project. Title to, and management and operation of, the reservoirs and the works necessary for their protection and operation shall remain in the United States until otherwise provided by an Act of Congress.

II

101st CONGRESS
2d Session

S. 2716

To amend the Warren Act (Act of February 21, 1911, 43 U.S.C. 523 et seq.) to expand the purposes for which excess storage or carrying capacity in reclamation projects may be used, and for other purposes.

IN THE SENATE OF THE UNITED STATES

June 7 (legislative day, April 18), 1990

Mr. Cranston (for himself and Mr. Wilson) introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

---

A BILL

To amend the Warren Act (Act of February 21, 1911, 43 U.S.C. 523 et seq.) to expand the purposes for which excess storage or carrying capacity in reclamation projects may be used, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the first sentence of the first section of the Act of February 21, 1911 (43 U.S.C. 523; commonly known as the "Warren Act"), is amended by—

(1) striking out "lands to be irrigated under any project" and inserting in lieu thereof "water users then

entitled to the delivery of water from a Federal reclamation project";

(2) striking out "lands and entrymen under the project," and inserting in lieu thereof "users of the Federal reclamation project, including fish and wildlife purposes,";

(3) inserting "and other water agencies" after "irrigation districts"; and

(4) inserting before the final period ", municipal, industrial, domestic, or miscellaneous purposes, including fish and wildlife purposes".

SEC. 2. The first sentence of the second section of such Act (43 U.S.C. 524) is amended by—

(1) inserting "other water agencies," after "irrigation districts,"; and

(2) inserting "other water agencies" before "water users' associations,".

SEC. 3. The second proviso in section 2 of such Act is amended by—

(1) inserting "for irrigation uses" after "furnished"; and

(2) striking out "one hundred and sixty acres" and inserting in lieu thereof "that landowner's ownership entitlement under Federal reclamation law".

Senator **Bradley**. Now, of course, the 5 minute limitation applies to each bill. So, Dennis Underwood, the Commissioner of the Bureau of Reclamation, is not required to limit his comments in total to 5 minutes. I do, however, hope he will be brief.

Are there other members of the committee who would like to make opening statements?

Senator McClure.

STATEMENT OF HON. JAMES A. McCLURE, U.S. SENATOR FROM IDAHO

Senator **McClure**. Mr. Chairman, thank you very much. I am going to do something relatively unusual for me. I am going to make an opening statement, because I think it is important to lay the groundwork for the legislation which we are reviewing with respect to the Minidoka project in Idaho and Wyoming, dealing with the Fall River Electric Cooperative in Idaho.

First of all, Mr. Chairman, I want to thank you for holding these hearings on a bill which passed the House unanimously on November 17, 1989. I would note for the record the presence of Congressman Stallings, who was important to that result in the House, and I welcome him here and we will hear from him later.

This bill proposes to authorize—and let me say very kindly, but nevertheless firmly, your statement of purpose of the bill is not entirely accurate, at least from our perspective, as to what it is intended to achieve, as will become more apparent as I make my statement.

The bill proposes to authorize the Secretary of the Interior to reimburse the Fall River Rural Electric Cooperative $1 million for expenditures on environmental protection related to its development of the Island Park hydro project. This is an amount equivalent to the tax credits Fall River lost as a result of construction delays Congress caused when it imposed unique environmental conditions on the project.

Let me say at the outset that nearly 2 years ago I tried to correct this problem with an amendment on the floor, but that effort was unsuccessful because the bill's floor managers did not want to accept my amendment. And although they did promise me that there would be a later vehicle on which they would assist my efforts, no such vehicle has yet to arrive.

It is now critical that we take this action because we lose an opportunity to see the construction of this environmentally benign hydro project which has the unique distinction of being a cooperative effort between the developer, environmentalists, and sportsmen. Let me explain that statement.

The story begins back in 1985, when Fall River applied to FERC for a license for their Island Park project. As is the case with any hydro project, even one such as this, which is located at an existing dam, there was considerable environmental concern.

As a result of those concerns, I personally visited the site in the summer of 1986 and discussed these concerns, which focused on the project's potential impact on fish.

As a result of those discussions, an agreement was reached by the project's sponsors and those who were concerned about what environmental protection measures were needed. Included in those discussions were representatives of the Henry's Fork Foundation, the Idaho Sportsmen's Coalition, the Henry's Fork Anglers, and the Federation of Fly Fishermen.

As a result, in what was a very unusual and unique procedure, I added a special provision to the Electric Consumer Protection Act of 1986 to make absolutely sure that there would be no untoward environmental impact as a result of construction of this project.

Let me read the relevant part of section 15(c):

> The Commission may issue such license only if the Commission determines that significant and permanent alteration of streamflow, habitat, water temperature, and quality will not occur as a result of the project.

It is important to note two things about these provisions of ECPA: first, it is a far higher standard than that which FERC normally applies, imposes on a project; and second, this standard applies to only one project in the United States, Island Park.

The intent of Congress when addressing the Island Park project in ECPA was to allow the project to be built in a timely manner, but with appropriate environmental safeguards, and let me emphasize, only could it be built if it met those environmental standards and otherwise the license could not be issued.

Unfortunately, we did not foresee the delays that we would unintentionally create by our addition of these special environmental requirements, and perhaps I was evading my responsibility when I said "our requirements" because Congress did adopt it, but it was my provision and at my insistence and Congress did not resist the adoption of that provision.

In December 1986, a project advisory committee was formed which included the groups already mentioned, to work out the license terms necessary to meet ECPA's environmental standard. In July 1987, the advisory committee's recommendations were sent to FERC.

However, it was not until October of 1988 that FERC finally issued the license, nearly 2 years after the original pre-ECPA anticipated licensing date.

Now, all of this ECPA-induced delay would have been frustrating but of no real consequence, except for one key factor—the expiration of the special energy tax credit.

The Windfall Profits Tax Act of 1980 provided an 11 percent tax credit for hydro projects, but the law provided that they must be placed in service by December 31, 1988, in order to qualify.

The project's sponsors relied on those tax credits when they developed their financing package and they had no idea or reason to assume that Congress would effectively undercut those financial assumptions.

The project finally received its license from FERC, but only 2 months before the date it was required to be placed in service in order to qualify for the tax credit, and that simply made it physically impossible to qualify for the tax credit.

Thus had Congress, albeit at my request, not imposed unique environmental requirements on this project, it could have and would have been built in time to receive the credits. But we did and they could not, and without the tax credit or an amount equivalent to the tax credit the project is uneconomic and will not be built.

Now, the obvious thing to do would simply be to extend the tax credit and, as I mentioned earlier, I tried to do just that, but those efforts were opposed. On October 11, 1988, when the Senate was considering the technical corrections to the 1986 Tax Reform Act, I offered an amendment on behalf of myself and Senators Wallop, Simpson, Symms, and Melcher to extend the in-service date for 2 years. That would have fixed the problem Congress created.

But unfortunately, although it was on the approved list of amendments to be offered, Senator Baucus objected, and as a result the amendment was not adopted. Had that amendment been adopted, we would not be here today.

In summary, let me restate the fundamental reason why this legislation is warranted; because Congress imposed unique environmental requirements on this hydro project, it was unable to be placed into service in time to qualify for the tax credit.

That is Congress' fault or, perhaps to be more precise, that is my fault, not the project sponsors' fault. It would be unfortunate if this project failed as a result of the actions of Congress.

The tax law provided an incentive for these types of projects and in this instance the project's sponsors willingly sought to satisfy all concerned. Let me read an excerpt from a statement submitted by Ron Mitchell, Executive Director of the Idaho Sportsmen's Coalition, in support of this legislation, which I believe makes the point:

> The Idaho Sportsmen's Coalition believes the good work that has gone into this project should not be in vain. We also believe that the project may actually benefit long-term management of the Henry's Fork. But above all, it is our feeling that when a developer makes an effort to do things the right away, and particularly to involve our members in the process through an advisory committee, that we should stick by our relationship with them and support their efforts to correct an unforeseen financial dilemma.
>
> We do not believe that Congress generally has an obligation to pay for the financial repercussions of its actions on industry when passing generic laws. But where, as in this case, one project was singled out to meet special conditions applicable to no one else and has met those conditions, we believe that you are presented with a fair, indeed compelling, case to provide relief.

I would ask unanimous consent that a copy of Mr. Mitchell's statement be included as part of the record.

Senator **Bradley**. The statement will be included in the record.

Senator **McClure**. In conclusion let me say that this bill is supported by the Governor of Idaho, both Senators from Idaho, both Senators from Wyoming, and Senator Burns from Montana. And I might add, it is also supported by both Congressmen from Idaho.

Finally, Mr. Chairman, I want to place in the record a letter from the Governor of the State of Idaho, former Secretary of the Department of the Interior, Cecil D. Andrus. It is addressed to you. I think you have it, but I want all in the hearing room to hear it as well.

Thank you very much, Mr. Chairman.

[The material submitted by Senator McClure follows:]

IDAHO SPORTSMEN'S COALITION,
Boise, ID, July 20, 1990.

Senator JIM MCCLURE,
Hart Senate Office Building, Washington, DC.

DEAR SENATOR MCCLURE: As I will be unable to testify before the Water & Power Subcommittee on H.R. 3694 next week, I was hoping that you would join Congressman Stallings in entering the Idaho Sportsmen's Coalition testimony in support of the project into the hearing record.

Please keep us advised of the bill's progress and if there is anything further we can do to be of assistance in your efforts.

Sincerely,

RON MITCHELL,
Executive Director.

[Attachment.]

PREPARED STATEMENT OF RON MITCHELL, EXECUTIVE DIRECTOR, IDAHO SPORTSMEN'S COALITION

Mr. Chairman & Members of the Subcommittee, my name is Ron Mitchell and I am Executive Director of the Idaho Sportsmens' Coalition (ISC). ISC is a broad based coalition of groups representing hunters, fishermen and other outdoor recreation enthusiasts in Idaho.

When conservationists and sportsmen in Idaho first learned of the proposed Island Park Hydro project at the existing Island Park dam in Fremont County we were very alarmed at the potential that the Project might have to jeopardize the fishery and wildlife values of the Henry's Fork of the Snake River, which is world renowned for its trout fishing and trumpeter swan populations. In particular, our experience with previous hydroelectric projects in Idaho made us skeptical of new proposals, and we were also aware that Bonneville Pacific Corporation, the proposed project developer, had problems with road construction on two other projects.

We were somewhat surprised, therefore, when the Fall River Rural Electric Cooperative and Bonneville approached us to discuss the project and determine whether we might be willing to work together to see that it was done the right way. After some discussion we agreed to serve on a volunteer Advisory Committee for the Project, whose first task was to craft a FERC license that would fully protect the river in accordance with special standards that were promulgated by Congress in 1986.

One of the first agreements reached by the Advisory Committee was that we would select a full-time, special "Environmental Coordinator" to work with the Committee at every stage of the project's consideration, construction and initial operation. That Coordinator was selected in early 1987 and subsequently worked with the Committee to draft a stringent FERC license.

As the Committee began work on the FERC license, the Idaho Sportsmen's Coalition was a particularly active participant in Committee meetings and the preparation of license conditions to insure that water quality (especially oxygen and nitrogen levels) flow and temperature parameters would be met. We also recommended tough enforcement provisions whereby the Project would have to immediately shut down or throttle back on operation if conditions were violated, and remain shut down or throttled back until conditions could be met. These provisions were to be monitored by an automated hookup of the project to the existing dam outlet to insure that a quick switch to the old outlet could be achieved so as not to harm the status quo. The Committee, with our help, also recommended an expensive river monitoring system, construction of a river aeration system to insure that the fishing pool at the base of the dam would not be compromised, and numerous other environmental protection measures. And, as often happens when consensus is reached, every single Committee recommendation to FERC ended up included in the final FERC license. The State of Idaho has also made hiring of the Environmental Coordinator a condition of its exemption for the project, although that action was largely perfunctory seeing as the Environmental Coordinator has been actively involved in the project since early 1987.

With hindsight, it is obvious that the Committee neglected only one thing. And that was that no one foresaw that meeting the new river protection requirements imposed on Island Park by Congress in the middle of its licensing process in late 1986 would require far more time for FERC than anticipated. It is also obvious that the reason the Fall River Cooperative and Bonneville were able to go the extra mile environmentally, so to speak, was that the Energy Tax credit program passed by Congress enabled project financing for the extra environmental costs that were agreed upon. In short, the tax credits applicable to this project stimulated precisely the positive type of environmental protections that we believe they were intended to foster.

For the past two years, however, the Island Park Project has been caught in a quandary. Great amounts of time and energy have been spent by the project proponents, Federal and State agencies, and the environmental community to tailor the project to insure absolute protection of the Henry's Fork, and yet the tax credits critical to financing have expired.

The Idaho Sportsmen's Coalition believes the good work that has gone into this project should not be in vain. We also believe that the project may actually benefit long-term management of the Henry's Fork. But above all, it is our feeling that when a developer makes an effort to do things the right way, and particularly to involve our members in the process through an Advisory Committee, that we should stick by our relationship with them and support their efforts to correct any unforeseen financial dilemma. We do not believe that Congress generally has an obligation to pay for the financial repercussions of its actions on industry when passing generic laws, but where, as in this case one project was singled out to meet special conditions applicable to no one else, and has met those conditions, we believe that you are presented with a fair, indeed compelling, case to provide relief.

In summary, the Idaho Sportsmen's Coalition supports the enactment of H.R. 3694 and the follow-up appropriation, and commends Congressman Stallings and Senator McClure for their previous, and ongoing, efforts on the Island Park Project. It would be a real shame to see all the good work that has gone into this project by individuals and organizations go for naught.

Thank you for this opportunity to present testimony.

FISHERIES WEST INC.,
Boise, ID, May 30, 1990.

Senator BILL BRADLEY,
Dirksen Building, Water and Power Subcommittee, Washington, DC.

DEAR SENATOR BRADLEY: I understand a hearing will be held on H.R. 3694 (Island Park Power Project). Fisheries West would like to be put on the list so a member of our staff can testify at that hearing. Fisheries West, Inc. has been selected, primarily by the environmental members of Island Park Technical Advisory Committee, to be the environmental coordinator for the Island Park Hydro Project. We have been involved in environmental issues both professionally and personally. We saw a need to form a company that could take our combined knowledge of many years of environmental and conservation experience to help protect and enhance the environment and yet develop reasonable projects.

Members of our company are actively involved with many sportsmen and environmental groups such as Trout Unlimited, Federation of Fly Fishers, Henrys Lake Foundation, Henrys Fork Foundation, Idaho Rivers United and Idaho Sportsmen Coalition. I personally was selected by the Governor as the negotiator for the sportsmen of Idaho to a team which developed the non point source water quality law for our state.

Fisheries Vest, Inc. is very interested in protecting the environment but our investigation, to this point, shows the Island Park Project is a good clean project that utilizes an existing reservoir and operates under current irrigation releases. We feel that with the proper design, development, and operation, the project can produce power and be a plus to the fishery.

During the last several years there have been many agency delays which have stalled the start up of the project. There also have been many conditions placed on the project by responsible state agencies. These were conditions sought by us and the environmental community. In all cases these conditions were readily agreed to by the development company. It is our belief that the delays by FERC and other Federal Agencies in reviewing and approving the license was the prime reason for the lose of the Energy Tax Credits. This is the type project the Energy Tax Credits were meant to encourage. It would be too bad if this project was not built.

I understand the hearing will be held on June 21, 1990. I would appreciate conformation that someone from our company will be able to testify.

Sincerely,

Barry L. Ross, *President.*

House of Representatives,
State of Idaho, July 30, 1990.

Hon. **Bill Bradley**,
United States Senate, Washington, DC.

Dear Senator Bradley: I add my voice in strong support of Senator McClure's request for reinstatement of a million-dollar tax credit to Fall River Rural Electric Cooperative in its development of a "piggy-back" hydro project on the dam at Island Park Reservoir.

This credit was lost through delaying actions of Congress; and its reinstatement, or equivalent reimbursement, is essential to the financial feasibility of this desirable and environmentally-approved endeavor.

Very truly yours,

Richard L. Davis,
Representative, District 31.

Office of the Governor,
Boise, ID, July 20, 1990.

Hon. **Bill Bradley**,
United States Senate, Washington, DC.

Dear Senator Bradley: The state of Idaho supports the passage of H.R. 3694, legislation that will provide equitable relief to the small Island Park Hydroelectric Project in eastern Idaho.

The project lost environmentally-significant tax credits due to direct Congressional intervention in the project's licensing. A site-specific provision of the Electric Consumers Protection Act of 1986 placed additional constraints on the project. Delays by the Federal Energy Regulatory Commission (FERC) in processing the permit also caused it to miss the energy tax credits that otherwise would have been available.

For a project of its size, the Island Park Hydroelectric Project has received unparalleled environmental scrutiny from the state of Idaho and the public. This project is on the Henry's Fork of the Snake River, one of the finest rainbow trout streams on the North American continent, and therefore deserved a very thorough review. Stringent environmental provisions have been placed on the project by both FERC and the Idaho Water Resource Board under the state protected rivers authorities.

A project like this that will not harm the environment is good for Idaho and for the nation. The electricity that will be produced will benefit the Pacific Northwest, which has seen its energy surplus decrease rapidly in the past few years. Passage of H.R. 3694 is, therefore, in the public interest, and Idaho asks for your support.

With best regards,

Sincerely,

Cecil D. Andrus,
Governor.

Senator **Bradley**. Thank you, Senator McClure.

Senator Bingaman.

STATEMENT OF HON. JEFF BINGAMAN, U.S. SENATOR FROM NEW MEXICO

Senator **Bingaman**. Thank you very much, Mr. Chairman. Let me thank you for scheduling this hearing and particularly for including in the hearing two bills that are important to us in New Mexico, S. 1932, a bill relating to the Vermejo Conservancy District and S. 1590, a bill that concerns the Elephant Butte Irrigation District.

Let me just say a few words about the Elephant Butte legislation, S. 1590. That is of particular concern to me. It is legislation that would authorize the Secretary of the Interior to transfer to the Elephant Butte Irrigation District in New Mexico title to the easements and rights-of-way which the U.S. acquired on behalf of the project and which are used solely for the purpose of serving that district.

In 1971 the district repaid the Bureau of Reclamation for its portion of the irrigation project and, as a result of that, the district requested and was given the authority to operate and to maintain New Mexico's portion of that project. They have been doing so since 1979 very successfully.

Unfortunately, their efficiency is somewhat undercut by the fact that they are still required to make operation and maintenance charges to the Bureau of Reclamation, which have escalated over 140 percent during that period. I think the district has clearly proved its ability to operate the irrigation district and the additional layers of bureaucracy involved in the present arrangement are really not helpful.

So, what we are trying to do through this legislation is to improve the management and reduce the costs. The reason the legislation is being proposed is because the Secretary of Interior and his Solicitor have made it clear that they do not believe they have the authority under present law to make this transfer.

I also want to recognize three New Mexicans who are here today for the hearing: Woodrow Gary, who will be testifying; Steven Hernandez; and Gary Esslinger. I hope that the committee can act quickly and recommend approval of this legislation. I think it would be good legislation and it makes sense for both the irrigation district and the Federal Government.

Senator BRADLEY. Thank you very much, Senator Bingaman.

We have in the room Senator Baucus of Montana. Welcome to the subcommittee and we would be glad to hear your views.

STATEMENT OF MAX BAUCUS, U.S. SENATOR FROM MONTANA

Senator BAUCUS. Thank you, Mr. Chairman. Thank you very much, Mr. Chairman, for scheduling this hearing. As you well know, this is a matter that has been of considerable interest to those of us in the Montana delegation, as well as those in the Idaho delegation.

I very much appreciate the statement of the senior Senator from Idaho in support of the project, as he has indicated to this committee, a project that is joined in by all members of relevant State delegations. I do not know of a single member of either of the two States' delegations who are opposed. In fact, there are not any. We all unanimously support the project.

I am here essentially to indicate why I am in support of the project, and that is because the pending bill will, I think, help resolve a dilemma faced by the Island Park project. As I said, although this project is located in the State of Idaho, it will provide long-term benefits, we believe, to rural consumers of electrical power in the West Yellowstone area in the State of Montana.

I might add, whenever I talk to people in that community, they always ask me, what is the status of Island Park? They very much support it.

As the chairman knows, this matter was before the Finance Committee just a couple of years ago. Financing for this particular project, as the chairman will remember, was imperiled when its licensing requirements were complicated, if not encumbered, by the intervention of the Congress, and because of its unique circumstances the treatment of Island Park by the granting of tax credit extensions ran afoul of basic narrowing restricting rules provided by the Finance Committee.

That is, no amendments could be allowed at that time which were very narrow in scope, and that is essentially why the Finance Committee in the Congress that sat in 1988 did not take up this measure.

In fact, at that time I was the floor manager of that 1988 tax bill and, although I was convinced of the merits of the project, as manager of the bill I felt constrained, in honor of our commitment not to take narrowly drawn amendments, to oppose this particular provision.

However, at that time, as the Senator from the State of Montana I was committed to make every effort to find another solution so the project could see a fair shake, and I am here today, Mr. Chairman, in fulfillment of that commitment.

In urging your speedy and favorable consideration, I would like to make three points: Number one, the proposed $1 million appropriation constitutes in essence a Congressional grant of equitable relief. I would ask my colleagues to remember that when this project was singled out by the Congress in 1986 to meet special environmental criteria, they were not applicable to other projects. It was a unique problem for Island Park.

Consequently, tremendous amounts of time have been expended by the Congress, by Federal and State agencies, to ensure that this project does in fact meet environmental goals, and that expenditure unfortunately will be for naught if we fail to treat this project fairly.

Second, the appropriation requested will not negatively impact the U.S. Treasury because it will be more than offset by payroll and other taxes arising from the project's construction. It is reasonable to assume, in fact, that in the long term the project will have favorable returns to the Treasury.

Third, the payment will be made to the nonprofit Fall River Rural Electric Cooperative to pay for the costs of meeting these extraordinary environmental protection measures that will be incorporated into the project to satisfy requirements legislated by the Congress in 1986.

I conclude by noting that the West, which several years ago was identified as having a surplus of installed electrical generating capacity, has now experienced such rapid growth that new sources of power are now becoming more needed. Island Park I think will help meet this need and, as has been stated by the Senator from Idaho and others, meet that need in an acceptable environmental manner.

In fact, the environmental restraints on this project are more than the usual. This project involves retrofitting an existing dam, with no new diversions or other construction that would change the flow of the river. So this is the type of project that appears to make sense from all perspectives, as has been pointed out by the Federal Energy Regulatory Commission and by others who have testified in favor of it.

I therefore, Mr. Chairman, ask that you consider this legislation, consider it quickly and favorably, to provide the equitable relief that this project deserves.

Senator **Bradley**. Thank you very much, Senator Baucus, for your testimony. Your presence here, and your support of the measure is not only noted, but has a very important effect on the committee. So I thank you very much for your advocacy of this position.

Senator **Baucus**. I appreciate that.

If I might, Mr. Chairman, I know that there are some who have environmental concerns and, believe me, I would not be here if in my judgment this project were to have significant environmental effects.

I think that, to be perfectly candid about it, this project will not only not damage river flow or quality of wildlife downstream, but some of the opposition that you may hear may be simply because of some interests that might find it a little more awkward to conduct their business on the river, which has virtually nothing to do with the environmental charges that may be levied.

This is not a project which is going to damage our environment. I thank you very much.

Senator **Bradley**. I thank you very much, Senator Baucus.

Congressman Stallings, would you like to take the witness chair and make a comment? Whichever you prefer.

Congressman, bon jour.

STATEMENT OF HON. RICHARD H. STALLINGS, U.S. REPRESENTATIVE FROM IDAHO

Mr. **Stallings**. Thank you, Mr. Chairman. I certainly appreciate your holding this hearing.

It was last November when the House passed my legislation and I remember chatting with you on the phone about the Senate's willingness to act on this, and I appreciate your commitment at the time that you would hold a hearing and the fact that today we are taking the next step in moving this legislation.

But I appreciate the opportunity to testify on this legislation because it is of vital concern to me and of interest to many of my constituents, that is the Island Park project.

Let me just summarize my testimony and ask that my written statement be made part of the hearing record.

I introduced this bill, which passed the House unanimously last November, after discussing it with Chairman George Miller, who helped draft the final legislative language. It resolves a longstanding problem concerning the proposed hydropower project at the existing Island Park dam located in my Congressional district.

The legislation simply authorizes the Secretary of the Interior to reimburse the Fall River Rural Electric Cooperative for the construction of facilities needed to meet environmental protection requirements at that dam. These special measures will cost approximately $1 million. I believe such relief is justified by principles of equity and fairness.

In 1986 Congress interrupted the normal licensing process for the Island Park project in mid-course and singled it out when it passed the Electric Consumer Protection Act. The 1986 hydro re-licensing law allowed construction of the project so long as it met new environmental criteria which applied to no other facility in the Nation. Congress did that as part of a compromise bill under which all other hydro projects on the Henry's Fork of the Snake River were permanently, permanently, banned by law.

These special environmental provisions, which I fully support, were designed to protect this outstanding river. My bill simply provides the necessary financial assistance to the Fall River Coop to pay for these environmental measures. The legislation is drafted to make sure that the money will be used to pay for environmental protection costs only.

Further, the money will not go to the project developer, but instead will be paid to the nonprofit coop.

I also want to emphasize that the State of Idaho, as Senator McClure has stated, supports the Island Park project. I was going to share the same letter of endorsement that the Senator read into the record from Idaho's Governor. I also have a statement of support from my colleague from Montana, Pat Williams, who at the last moment was unable to attend this hearing, if his statement will also be included in the record.

It is also important to point out that the Idaho Department of Fish and Game has worked closely with the project sponsors. As a member of its advisory committee, the agency has provided valuable assistance and has signed off on the project.

Briefly, let me share some background information on the Island Park proposal. In 1985 the Fall River Coop applied to the Federal Energy Regulatory Commission for a license to construct the hydro project to serve customers in Idaho, Montana, and Wyoming.

In late 1986, after considering legislation which I introduced to study the Henry's Fork of the Snake River for a wild and scenic river study, Congress determined instead to ban hydroelectric power development on a portion of the river, except for that proposed Island Park project. Although the Henry's Fork is one of the finest trout streams in the country, we believed Island Park should be allowed to be built because its planning was already under way and it was situated in an existing dam.

Further, it only involved utilizing existing water flows, without any new diversions, dams, or river bypasses. In short, our intention was to grandfather this one project.

When sportsmen in Idaho first learned of the proposed Island Park dam, they were very alarmed at the potential impacts the project could have on Henry's Fork. I too shared their concern.

If I had felt that this project would jeopardize the Henry's Fork fishery, I would not have proposed and supported such legislation. In fact, it was my effort back in 1985 that led to the ultimate ban of future hydro projects. From the beginning, everyone recognized that Henry's Fork of the Snake River is a stream of exceptional fishery, wildlife, and recreational values.

At the time Congress took action, it was part of a larger compromise permanently banning all other hydro projects on that river. Therefore, we felt that conservation and fishery groups who were seeking protection of Henry's Fork should be pleased by our action, and indeed they were.

Our goal was to protect this magnificent river from future developments while allowing for this one hydro project to be built. Both sides of the compromise need to be honored. That is why I am here today.

So we now have a hydro project that satisfies every requirement that Congress placed on it. After several years of work, it has received the necessary construction permits and clearances from the Federal Government. In addition, the sponsors have secured a special exemption from the State of Idaho to proceed with the project.

The project proponents have gone the extra mile to work with Federal agencies, State officials, and the conservation community to ensure compliance and environmental protection. Unfortunately, at the time we passed the Electric Consumer Protection Act we did not anticipate that its provisions pertaining to Island Park would cause any substantial licensing delays. Everyone assumed that the project could be placed in service by the end of 1988, before the 11 percent energy tax credits were due to expire.

In looking back, we are now aware that the time to accomplish this work has resulted in the loss of the tax credits that were critical to finance the project's special environmental needs required by Congress. As I mentioned earlier, the project cannot be financed with some additional assistance from Congress.

When I was first approached with this dilemma by officials from Fall River in late 1987, I immediately asked the House Ways and Means Committee to pass an extension of the tax credit in this unique case. I was told my request came too late in the year.

I renewed my efforts in 1988 and again in 1989. Everyone I talked to in the House and Senate were sympathetic to my request and stated we had a meritorious case. Even though there was support for our position, we were told that it would be difficult to legislate because of the so-called rifle-shot rule which prevented granting tax relief to any individual taxpayer or entity.

I was therefore faced with only two choices: first, I could tell the project supporters and others that had worked so hard to meet Congressional demands: tough luck, and a Catch-22 dilemma would kill the project. Second, I substitute an alternate approach to cover the necessary tax credit.

Due to the efforts that had been made to address environmental concerns and the commitment to work cooperatively with various interests, I was convinced that financial relief was justified. I believe the unique nature of the case also ensures that this type of funding will not set a precedent for future projects.

As I see it, we should honor our commitment to the Island Park project because it would not be in the situation it is today if Congress had not specifically intervened in the permitting process.

In closing, Mr. Chairman, I believe this is a simple matter of equity and fairness on our part. We should not forget that this bill honors a compromise agreement reached back in 1986. Many people have put a great deal of work into the project. Both FERC and the State of Idaho have concluded that it would have long-term benefits.

In view of these efforts and findings, it would be unfortunate for us not to provide the financial relief. While Congress is not obligated to provide economic relief for legislative acts of a generic nature, I believe that this case is unique and deserves special consideration.

I ask you, Mr. Chairman, to give us a chance to solve this important matter. I urge you to give immediate and favorable action on the Island Park legislation. Once again, I appreciate the opportunity to be here today and I look forward to hearing from our Idaho friends. I would be happy to respond to any questions.

[The prepared statements of Mr. Stallings and Mr. Williams follow:]

PREPARED STATEMENT OF HON. RICHARD H. STALLINGS, U.S. REPRESENTATIVE FROM IDAHO

OPENING COMMENTS

Mr. Chairman. Thank you for scheduling this hearing today on H.R. 3694, the Island Park Hydroelectric Project Authorization. I appreciate the opportunity to testify on an issue of vital concern to me and of interest to many of my constituents. I would like to summarize my testimony and ask that my written statement be made a part of the hearing record.

I introduced the bill which passed the House unanimously last November, after discussing it with Chairman George Miller who drafted the final legislative language. It resolves a longstanding problem concerning a proposed hydropower project at the existing Island Park dam located in my congressional district.

The legislation authorizes the Secretary of the Interior to reimburse the Fall River Rural Electric Cooperative (Co-op) for the construction of facilities needed to meet environmental protection requirements at the Island Park dam. These special measures will cost approximately $1 million. I believe such relief is justified by principles of equity and fairness.

SPECIAL ENVIRONMENTAL PROTECTION MEASURES

The reason I am here today with this request is that in 1986 Congress interrupted the normal licensing process for the Island Park project in mid-course and singled it out when it passed the Electric Consumers Protection Act (ECPA) The hydro relicensing law allowed construction of the project so long as it met new environmental criteria which applied to no other facility in the nation.

We did that as part of a compromise bill under which all other hydro projects on the Henry's Fork of the Snake River were permanently banned by law. These special environmental provisions, which I fully support, were designed to protect one of the nation's premier trout streams. Further, they are in addition to existing Federal Power Act requirements.

My bill would provide the necessary financial assistance to the Fall River Co-op to pay for these environmental measures to help ensure that construction and operation of the project will afford complete monitoring and protection. The legislation is drafted to make sure that the money will be used to pay for environmental protection costs only. Further, the money will not go to the project developer, but instead will be paid to the non-profit Co-op.

STATE OF IDAHO SUPPORTS PROJECT

I also want to emphasize that the State of Idaho supports the Island Park project. At this time, Mr. Chairman, I would like to share with the Committee a letter of endorsement and support from Idaho Governor Cecil Andrus. I would ask that it be made a part of the hearing record.

In addition, I have a statement from my colleague from Montana, Pat Williams, who, at the last minute, was unable to attend today's hearing. And, finally, I have a statement from the Idaho Sportsmen's Coalition, one of the state's largest sporting groups, expressing strong support for the bill. I would ask that both statements be made a part of the record.

It also is important to point out that the Idaho Department of Fish and Game has worked closely with the project sponsors. As a member of the advisory committee, the agency has provided valuable assistance and has signed off on the project.

THE ISLAND PARK DAM

Let me share some background information on the proposal that may prove useful in better understanding this unique situation. In 1985, the Fall River Rural Electric Cooperative applied to the Federal Energy Regulatory Commission (FERC) for a license to construct the small hydro project.

The Island Park dam, which currently has no power generation, was first built in 1938 and was reconstructed in 1982. The Co-op plans to build a 4.8 megawatt power plant at the existing Bureau of Reclamation's Minidoka dam to serve customers in Idaho, Montana, and Wyoming.

The project will operate on existing irrigation releases from the Island Park Reservoir and is expected to provide enough electricity annually to power some 3,000 typical households. Its annual output of energy will equal approximately 50,000 barrels of oil.

COMPROMISE AGREEMENT SHOULD BE HONORED

In late 1986, after considering legislation which I introduced to designate the Henry's Fork of the Snake River as a Wild and Scenic study river, Congress determined instead to ban hydroelectric power development on a portion of the river—except for the proposed Island Park project.

Although the Henry's Fork is one of the finest trout streams in the country, we believed Island Park should be allowed to be built because its planning was already underway and it was situated at an existing dam. Further, it only involved utilizing existing water flows, without any new diversions, dams, or river by-passes.

In short, our intention was to grandfather this one project.

When conservationists and sportsmen in Idaho first learned of the proposed Island Park dam, they were very alarmed at the potential impacts the project could have on the Henry's Fork. I, too, shared their concerns. If I had felt that this project would jeopardize the Henry's Fork fishery, I would not have proposed and supported such legislation. In fact, it was my legislative effort back in 1985 that led to the ban on future hydro projects.

From the beginning, everyone recognized that the Henry's Fork of the Snake River is a stream of exceptional fishery, wildlife, and recreational values. At the time Congress took action, it was part of a larger compromise permanently banning all other hydro projects on the river. Therefore, we felt that the conservation and fishery groups who were seeking protection of the Henry's Fork should be pleased by our action, as indeed they were.

Our major goal was to protect this magnificent river from future development while allowing for this one hydro project to be built. However, both sides of a compromise need to be honored. That is why I am here today.

PROJECT READY TO PROCEED

So we now have a hydro project that satisfies every requirement that Congress placed on it. After several years of work, it has received the necessary construction permits and clearances from the Federal Government. In addition, the sponsors have secured a special exemption from the State of Idaho to proceed with the project.

The project proponents have gone the extra mile to work with Federal agencies, state officials, and the conservation community to ensure compliance and environmental protection. In looking back, we are now aware that the time to accomplish this work has resulted in the loss of tax credits that are critical to finance the project's special environmental commitments required by Congress.

LEGISLATIVE RELIEF OFFERS ONLY SOLUTION

Unfortunately, at the time we passed ECPA, we did not anticipate that its provisions pertaining to Island Park would cause any substantial licensing delay. Everyone assumed that the project could be placed in service by the end of 1988, before the 11 percent energy tax credits were due to expire. The tax credits have now expired.

As I mentioned earlier, the project cannot be financed by Fall River Co-op without some additional assistance from Congress. When I was first approached with this dilemma by officials from Fall River in late 1987, I immediately asked the House

Ways and Means Committee to pass an extension of the tax credits in this unique case. I was told my request came too late in the year.

I renewed my efforts in 1988 and 1989. Everyone I talked to in the House and in the Senate was sympathetic to my request and stated we had a meritorious case. Even though there was support for our position, we were told that it would be difficult to legislate because of the so-called "rifle-shot" rule which prevented granting tax relief to any individual taxpayer or entity.

When we attempted to group ourselves within a "generic" amendment to satisfy rifle-shot criteria, the Committee could find no other projects or taxpayers similarly situated, because no other project had been similarly disadvantaged by a project-specific Act of Congress.

I was therefore faced with only two choices. First, I could tell the project supporters and others that had worked so hard to meet congressional demands that tough luck and a Catch-22 tax dilemma would kill the project. Second, I could substitute an alternative approach to cover the necessary tax credit.

Due to the efforts that had been made to address legitimate environmental concerns and the commitments to work cooperatively with various interests, I was convinced that financial relief was justified. I believe the unique nature of this case also ensures that this type of funding will not set a precedent for future projects.

SENSE OF URGENCY

Mr. Chairman, let me also stress that time is of the essence on this request. The project sponsors are ready to enter commitments for pre-construction financing and planning, order equipment, and negotiate contracts for construction and environmental monitoring.

These commitments must be made no later than January in order for the project to meet the critical deadlines contained in existing law and satisfy the provisions of the license.

Furthermore, construction work at the dam will almost entirely be limited to the fall months when fishermen are off the river and the dam is drawn down at the end of the irrigation season. Therefore, it is imperative that construction begin next fall in order to meet deadlines for the project to be placed in service.

CLOSING COMMENTS

As I see it, we should honor our commitment to the Island Park project and the sponsor because they would not be in the situation they are in today if Congress had not specifically intervened in the permitting process.

In closing, the bottom line is that we have a project that has been disadvantaged by site-specific congressional action. The impacts of our actions, however, were both unintended and unanticipated when we authorized the project to proceed. I believe this is a simple matter of equity and fairness on our part. And we should not forget that it honors a compromise agreement reached back in 1986.

Many people have put a great deal of work into this project. Both FERC and the State of Idaho have concluded that it will have long-term benefits. In view of these efforts and findings, it would be unfortunate for us not to provide the financial relief requested. While Congress is not obligated to provide economic relief for legislative acts of a generic nature, I believe that this case is unique and deserves special consideration.

I ask you, Mr. Chairman, to give us a chance to solve this important matter. I urge you to give immediate and favorable action on the Island Park legislation. Once again, I appreciate the opportunity to be here today and I look forward to hearing from our Idaho friends. I will be happy to respond to questions.

PREPARED STATEMENT OF HON. PAT WILLIAMS, U.S. REPRESENTATIVE FROM MONTANA

Thank you for the opportunity to appear before the Subcommittee with my colleague from Idaho, Mr. Stallings. I strongly support enactment of H.R. 3694 which will provide the small Fall River Rural Electric Cooperative with assistance to overcome a financial dilemma it faces as a result of Congress' 1986 action affecting the Island Park hydroeletric project.

The legislation before you today in the form of H.R. 3694 was developed by Congressman Stallings and myself last fall after two years of attempting to extend the energy tax credits for the project. While everyone we contacted during the two year period agreed with us that Island Park case was most meritorious, we were stonewalled because of the so-called rifle shot rule adopted by the tax committees which prevented granting tax relief . . . even in the case where one single project was handicapped by a project specific Act of Congress. Thus the Congress singles this project out to meet special and unique criteria pertaining to environmental protection but then denies it the relief necessary to assure that singular protection.

It is not fair that this project which has done everything Congress has asked, should be eliminated because of a quirk in Congressional policy making.

Upon realizing the dilemma we faced, Congressman Stallings and I spoke to Chairman Miller of the House Water and Power Subcommittee and asked him about possible solutions to our problem. This bill, H.R. 3694 is the product of our deliberations.

The bottom line on H.R. 3694, Mr. Chairman, is that it is justified in equity. And, as was pointed out by Chairman Miller during the House Floor debate last fall, because it merely responds to an action of Congress applicable to this one project only, granting financial relief requested will NOT set a precedent for similar relief elsewhere. This is a unique case justifying unique relief.

Thank you again for the opportunity to testify. I urge the Subcommittee to move the bill favorably at the earliest possible date.

Senator **Bradley**. Thank you very much, Congressman, for your testimony. You have been a very strong advocate of this project, there is no doubt about that.

Mr. **Stallings**. Thank you.

Senator **Bradley**. I would now like to turn to the Commissioner of the Bureau of Reclamation, Commissioner Underwood. Welcome back to the subcommittee. I had a 15 minute break here, a 20 minute break after this mornings hearing. You are probably ready to go. We have not spent so much time together in a long while.

STATEMENT OF DENNIS B. UNDERWOOD, COMMISSIONER, BUREAU OF RECLAMATION, DEPARTMENT OF THE INTERIOR, ACCOMPANIED BY CHARLES CALHOUN, ALBUQUERQUE OFFICE, BUREAU OF RECLAMATION

Mr. **Underwood**. I know. I will try to be briefer this afternoon. With me today I have Charlie Calhoun, who is out of our Albuquerque office.

With regard to the Reclamation's position on H.R. 3694 and with due respect to Senator McClure and others who have testified, Reclamation must oppose the bill on the principle that it would allow reimbursement by the Federal Government of environmental studies on non-Federal portions of the project. We are not opposed to the power plant so long as it does not interfere with the integrity of the dam or the operation of the dam and its ability to deliver water or interfere with flood control and fish and wildlife activities.

That concludes my remarks, as I said, I will be as brief as I can on this.

[The prepared statement of Mr. Underwood on H.R. 3694 follows:]

PREPARED STATEMENT OF DENNIS B. UNDERWOOD, COMMISSIONER, BUREAU OF RECLAMATION, DEPARTMENT OF THE INTERIOR, ON H.R. 3694

Mr. Chairman, H.R. 3694 would require the United States to reimburse the Fall River Rural Electric Cooperative for expenditures incurred by the Cooperative to meet environmental study requirements for its proposed hydroelectric power development on the Island Park Dam in eastern Idaho. The dam is part of the Bureau of Reclamation's Minidoka Project.

The Bureau of Reclamation strongly opposes H.R. 3694 because it would allow for reimbursement by the Federal Government of environmental studies on the non-Federal portions of a Project and, if enacted, could set a precedent for the same kind of reimbursement for other projects. In addition, the insertion of the provisions of H.R. 3694 into the Act of September 30, 1950, would raise questions about cost allocations for the Minidoka Project and charges for power.

Fall River Rural Electric Cooperative has been issued a license by the Federal Energy Regulatory Commission to construct a hydroelectric powerplant at the dam. The dam is part of a multi-purpose Bureau of Reclamation project, which serves about 1.2 million acres of irrigated agriculture in the Upper Snake River Basin. Other project purposes include irrigation, power production, fish and wildlife, recreation, and flood control. It is located on the Henry's Fork of the Snake River about 30 miles from West Yellowstone, Montana.

The licensee was unable to begin construction on the powerplant in time to qualify for tax credits under the Electric Consumers Protection Act and, as a consequence, is seeking relief from those costs under the terms of H.R. 3694. This bill would allow the Secretary of the Interior to reimburse Fall River Rural Electric Cooperative for the costs incurred in satisfying all of the environmental studies required so they could go forward with the powerplant.

While we oppose enactment of H.R. 3694, Reclamation has no objections to the basic concept of a powerplant at the dam, provided:

1. That the powerplant, or any appurtenant works, do not interfere with the integrity of Island Park Dam. There has been considerable discussion between the licensee's consultant and Reclamation staff concerning an acceptable method of interfacing the proposed powerplant with the dam as it relates to putting a siphon through the dam. The result has been tentative acceptance by Reclamation of all approach to the problem, although final designs have not been supplied for our review.

2. That the operation of the powerplant does not, in any way, interfere with the operation of the dam or its ability to deliver water to the project or interfere with flood control, fish and wildlife activities. The conditions under which the powerplant will operate are spelled out in the FERC license.

Costs of environmental studies on Federal projects and non-Federal projects such as the proposed powerplant construction are the responsibility of the project beneficiaries. This legislation, if enacted, would qualify environmental study costs assigned to a paying function as non-reimbursable for the first time.

I would be pleased, Mr. Chairman, to answer any questions you may have.

Senator BRADLEY. Well, that was the briefest.

Senator McCLURE. It was not satisfactory, but it was brief.

Senator BRADLEY. Would you like to remain?

Mr. UNDERWOOD. It would make it easier for me.

Senator BRADLEY. I think that would be best, if you would just scoot down.

Senator McCLURE. Let me just ask you a question, if it is satisfactory, Mr. Chairman. As I understand the Department's objection to the bill is that it is viewed as a reimbursement for the environmental protection afforded by the project. Would the Department object if you viewed it as a substitution for the tax credit which was lost as a result of the special conditions applied to this license?

Mr. UNDERWOOD. What we are concerned with is the precedent that would be set in terms of being provided as reimbursement for environmental studies.

Senator McCLURE. Thank you very much.

Mr. UNDERWOOD. And that is the only principle.

Senator McCLURE. That is the only problem. Thank you very much.

Senator BRADLEY. So let me just make sure that this is clear. You think that this sets—the reason you oppose it is because of the precedent that is set?

Mr. UNDERWOOD. Yes.

Senator BRADLEY. And that precedent would mean what?

Mr. UNDERWOOD. The precedent is that the Federal Government would be paying for environmental studies for non-Federal components of a project. In other words, our fear is with respect to entering into partnerships, as in this particular case, where someone is using part of that facility for their own benefit. They should pay for associated environmental costs and it should not be a Federal obligation.

Senator **Bradley**. Thank you very much. Would you just move down then.

Our next witness is the Honorable Reed Hansen, Idaho House of Representatives. Go head, Representative Hansen.

STATEMENT OF HON. REED HANSEN, MEMBER, IDAHO HOUSE OF REPRESENTATIVES

Mr. **Hansen**. Thank you, Mr. Chairman.

Senator **Bradley**. We try to operate by the 5-minute rule. Now, Mr. Underwood came in under the 5-minute rule.

Mr. **Underwood**. That compensates for this morning.

Senator **Bradley**. That sets a very good example.

Mr. **Hansen**. Mr. Chairman, I can certainly appreciate this dilemma sometimes when there is a little too much testimony on the same subject.

My name is Reed Hansen and I represent a largely rural Idaho district, number 32. I have about 80,000 people in my district. I have to add that I am one of those famous Idaho potato farmers that occasionally you read about. I am one of the authors of those products.

I appear before you today to ask that you give your support to grant a $1 million appropriation for the Island Park hydroelectric project. This proposal will have substantial benefits to my constituents by increasing the tax base of Fremont County by an estimated 6 percent and by giving the local rural electric coop a generating facility that will help meet its future power needs. No less of an authority than the Northwest Power Planning Council is now predicting electric supply shortage for our area, so we should be moving to create new supplies before a crisis does come about.

The main reason I traveled to Washington, D.C., to appear before you is that I think this project deserves fair treatment by the Congress. As you know, in 1986 a Congressional compromise was reached on the Henry's Fork of the Snake River under which all future hydroelectric projects were banned in return for Island Park being allowed to proceed.

In the same legislation that implemented the hydro ban, Congress also imposed new environmental licensing standards for the project to meet to ensure that it did not in any way alter the stream flow, water quality, temperature, or habitat. These new criteria were unique to the Island Park project because many other projects are permitted to alter such parameters and routinely have done so.

Further, as I mentioned at the outset, Island Park was part of a Congressional compromise and it disturbs me deeply that some of the environmental groups who applauded that compromise are now trying to go one step farther and kill the only concession made to the hydro development side. I am deeply troubled to see the

Henry's Fork Foundation, which was one of the prime victors in the 1986 compromise, now trying to defeat the one project left.

Their position is even more troubling when one realizes that they are on the advisory committee for this project and did not appeal the FERC license.

Mr. Chairman, I would like to leave for just a few minutes the rest of my written testimony. In order to make sure that everyone understands that I am not some redneck developer that says let us just do it, we do not care, I spent 10 years on the State water board. It is a governor's appointment, created by a constitutional amendment. And I was on the original State water board that came up with the first State water plan for the State of Idaho.

In that plan we broke a lot of new ground, and for the first time the board and the State of Idaho and the State public interest took positions that addressed some of these quality of life concerns. One of the main policies that we adopted and has been enacted in State statute is that in the issuing of a water right you must consider the State public interest. Somehow you had to add to the technical engineering aspects of a water right. You had to consider its public impact. That was a real fine change that addressed some of the quality of life and the fish interests.

Also, we passed or caused to be passed an in-stream flow bill that issued water rights for fish and aquatic life. I was the House sponsor of the Idaho rivers bill which has been mentioned earlier here, that put many of our segments under protection by the State water board and the State legislature.

So it is not that we do not care.

Mr. Chairman, my final comment would be that it seems to me as a legislator, as a citizen, as a former member of the State water board, that common sense says that if we cannot retrofit an existing dam, given our future projected shortfalls in electricity coming, it seems to me that my State and I think even the Nation is in some kind of difficulty.

It is a privilege to be here, Mr. Chairman. Thank you very much.

[The prepared statement of Mr. Hansen follows:]

PREPARED STATEMENT OF HON. REED HANSEN, MEMBER, IDAHO HOUSE OF REPRESENTATIVES, ON H.R. 3694

Mr. Chairman and Members of the Subcommittee, my name is Reed Hansen and I represent the largely rural Idaho House District No. 32 which encompasses two counties.

I appear before you today to ask that you give your support to grant a $1 million appropriation for the Island Park Hydroelectric Project. This proposal will have substantial benefits to my constituents by increasing the tax base of Fremont County by an estimated 6% and by giving the local rural electric cooperative a generating facility that will help meet its future power generation needs. No less of an authority than the Northwest Power Planning Council is now predicting impending electric supply shortages for our area, so we should be moving now to create new supplies before a crisis exists.

The main reason I traveled to Washington, D.C. to appear before you is that I think this project deserves fair treatment by the Congress. As you know, in 1986 a Congressional compromise was reached on the Henry's Fork of the Snake River under which all future hydroelectric projects were banned in return for Island Park being allowed to proceed. In the same legislation that implemented the hydro ban Congress also imposed new environmental licensing standards for the project to meet to insure that it did not in any way alter the streamflow, water quality, temperature or habitat. These new criteria were unique to the Island Park Project because many other projects are permitted to alter such parameters, and routinely do so.

In any event, subsequent to Congress' action on Island Park, I have monitored the project's remarkable progress through the Federal and State administrative maze. I say "remarkable" because I have been especially impressed with the efforts Bonneville and the Fall River Cooperative have made to consult with everyone who cared and to agree to license conditions and environmental protection measures to rigidly adhere to the Congressionally set standards.

Now, however, because that process took so long, even though FERC did not anticipate it would, the project finds that the financial incentives which enabled it to make special environmental concessions have expired. And so the project cannot be built unless those incentives are renewed or replaced. Which is precisely the goal of H.R. 3694.

It is ordinarily my belief that Congress should not grant subsidies or financial assistance to projects where doing so would place one project at a competitive advantage vis-a-vis another. However, where, as here, we have a case where Congress disadvantaged one particular project, it seems only fair that compensatory relief should be afforded. This is especially true for Island Park, because if it is built, the project will generate very substantial short and long term benefits to the Treasuries of Idaho and the United States, and to Fremont County.

Further, as I mentioned at the outset, Island Park was part of a 1986 Congressional compromise, and it disturbs me deeply that some of the environmental groups who applauded that compromise now are trying to go one step farther and kill the only concession made to the hydro development side. In my opinion, such a "what's mine is mine, and what's yours is mine too" attitude should not be tolerated, and I am deeply troubled to see the Henry's fork foundation, which was one of primary victors in 1986, now trying to defeat the one project left. And their position is even more troubling when one realizes that they are on the Advisory Committee for this project and did not appeal the FERC license when it was issued.

So in the name of all that is fair I ask you to approve H.R. 3694. How many other places present the opportunity to build a clean hydro project at an existing dam, without altering river flows, and produce very positive dollar returns to the United States and the State of Idaho? This project has been approved by the Forest Service, FERC, the Idaho Department of Fish & Game, Governor Andrus, the Idaho Sportsmens' Coalition, our entire Congressional delegation, and in addition has been granted a special exemption to proceed by the Idaho Water Resources Board. To me, that is a pretty resounding endorsement and one that warrants your approval of the bill before you today.

Thank you for this opportunity to testify.

Senator **Bradley**. Thank you very much, Mr. Hansen, for your testimony. The subcommittee notes it carefully.

At this time I would like a panel to join Mr. Underwood so that we can continue the hearing on H.R. 3694: Robert Herbst, Executive Director, Trout Unlimited; Rear Admiral James B. Greene; Michael Lawson, Executive Vice President of the Henry's Fork Foundation; Dee M. Reynolds, General Manager, Fall River Rural Electric Co-op; and Clark Mower, Development Manager, Bonneville Pacific Corporation.

Let me welcome all of you to the subcommittee and urge you to abide by the 5 minute rule. We have still to hear from people who have come from as far as you have in some cases, in some cases much further, to testify, and I hope that you will help us by limiting your comments.

Let us begin with Mr. Robert Herbst.

STATEMENT OF ROBERT L. HERBST, EXECUTIVE DIRECTOR, TROUT UNLIMITED

Mr. **Herbst**. Thank you, Mr. Chairman, Senator Bradley, Senator McClure.

I will ask that my entire testimony be entered in the record and I will highlight it and then deviate a little and add to it.

I am pleased to be here on behalf of Trout Unlimited. We are an international conservation organization, and I speak in opposition to the proposed Island Park hydroelectric project, H.R. 3694. For the record, I am Executive Director of Trout Unlimited, which consists of 68,000 members in 495 chapters in the United States, including chapters in Idaho. And Mr. Chairman, the largest chapter in the Nation is in your State, East Jersey, with over 800 members.

We also have chapters and organizations in eight other nations of the world. Our philosophy is one of believing very strongly and working very——

Senator BRADLEY. Let the record reflect that my State is New Jersey, not east Jersey.

Mr. HERBST. No, but our chapter is East Jersey.

Senator BRADLEY. Oh, okay.

[Laughter.]

Mr. HERBST. So the largest chapter is just part of your State, Mr. Chairman.

Senator BRADLEY. There was an east Jersey and a west Jersey once upon a time.

Mr. HERBST. We believe strongly and we have worked very hard for the protection and the enhancement of the streams and rivers of this Nation, particularly those sustaining a cold water fishery, trout, salmon, and steelhead.

You may also recall, Mr. Chairman and Senator McClure, that I served as Assistant Secretary of Interior for Fish, Wildlife and Parks from 1977 to 1981 and for a very short time as Acting Secretary of Interior, so I had a very direct interest and responsibility for the kind of treasure that I will be asking you to protect today.

I was interested in the statement and the letter from Governor Andrus, as I served, as you know, as his assistant for some 4 years, and that is why you read it, Senator McClure. As such, I was his chief assistant for fish and wildlife for those 4 years.

He in my estimation is one of the greatest Secretaries of Interior and as a politician one of the great public servants of our Nation. One of the good things about him, of course, is that we would disagree from time to time and we still got along.

I do agree with that part of his letter that says that the Henry's Fork is the finest rainbow fishery in the United States. I just disagree on how we handle that finest treasure in this country.

The Island Park dam, the site of a proposed hydroelectric project, was built approximately 50 years ago on the Henry's Fork of the Snake River in eastern Idaho. It is operated, as you know, by the Bureau of Reclamation. It is of earth and rock construction. It lies in an earthquake-prone area. We believe it is in one of the most beautiful and geologically important areas of the West.

Below this dam for the next 60 miles lies the world's famous Henry's Fork of the Snake River, and part of it of course flows through the Harriman State Park, which was a gift of land to the States from the Harriman family. The Henry's Fork is regarded, as many of you have said, as one of the world's, if not the world's, finest dry fly trout fisheries. The natural beauty, the abundant wildlife, the large rainbow trout, and the immense hatches make it a fisherman's mecca, and thousands of people from across the world go to that part of Idaho to fish that area.

As an aside, angling in this Nation is not a frivolous pursuit. It involves some 64 million people. It is the most popular form of outdoor recreation for males in this Nation. It is the fifth most popular form of outdoor recreation for females. It is also big business, as anglers spend approximately $30 billion a year pursuing their sport.

We believe, Mr. Chairman, that the ecology of the Henry's Fork runs on a very delicate equilibrium. The winters are long and harsh, the summers are dry and warm, and the dam and the body of water behind it moderate the temperature, the oxygen, and other parameters to provide for a very outstanding fishery.

Our concern is that any interruption of that delicate balance will influence the river and its living things unfavorably. Hydroelectric projects in this Nation can cause major ecological threats. The dissolved oxygen can be altered. The turbines and high flows can compress water and result in nitrogen saturation, giving the fish the bends. Siltation during construction can have a major impact upon spawning habitat. Water temperatures can be adversely affected. Turbines can kill fish, and dams can be weakened in construction.

For over 6 years, Professor John Griffith, Ph.D. at Idaho State University, has studied the Henry's Fork with his graduate students, and the research has resulted in volumes of important data, and he is considered perhaps the authority on the Henry's Fork. He has expressed the concern that: "The Henry's Fork is simply too valuable a legacy and too much of an international landmark to take any risk with."

Similarly, in reading, which is a little different than what I heard, the FERC license, the U.S. Department of Interior's Fish and Wildlife Service, the Idaho Fish and Game Department, and the Greater Yellowstone Coalition do "express concerns that the project can cause adverse effects to the fish and wildlife resources in that area."

Mr. Chairman, the second objection I have is the same one that the Commissioner of the Bureau of Reclamation brought up, and that is the $1 million provision which is a direct payment to a private developer to pursue hydroelectric development and the risks that I have discussed. So as taxpayers and concerned citizens we express our concern in light of the fact that the energy tax credits have expired and we believe this would be a dangerous precedent to set, one that would continue the philosophy of those tax credits.

It seems to me to offer a precedent that could open Pandora's box for private interests for other projects to expect the Government to fund fish and wildlife for other mitigation. As to the extent of that Pandora's box, I would remind you that in the next 3 years there are at least 175 relicensings due on hydroelectric projects in this Nation, and some of those involve more than one project.

If they were each to seek $1 million to mitigate fish and wildlife or other problems with the project, you can see the kind of Pandora's box that we would open.

So in summary, Mr. Chairman, Trout Unlimited opposes this project and the $1 million appropriation to a private interest.

[The prepared statement of Mr. Herbst follows:]

PREPARED STATEMENT OF ROBERT L. HERBST, EXECUTIVE DIRECTOR, TROUT UNLIMITED, ON H.R. 3694

Mr. Chairman, Members of the Committee, I am pleased to be here today on behalf of Trout Unlimited—an international conservation organization—to oppose the proposed Island Park hydroelectric project (H.R. 3694).

For the record, I am Robert L. Herbst, executive director of Trout Unlimited, a conservation organization of 68,000 members with 490 local chapters—including Idaho—in the United States. We also have Trout Unlimited organizations in Canada, Australia, and New Zealand. In addition, similar organizations have affiliated with us in Spain, France, Japan, the U.S.S.R., the Peoples Republic of China, and Yugoslavia. Our organization believes strongly in and works diligently for the many values of our Nation's rivers and streams—particularly those sustaining a coldwater fishery—trout, salmon, steelhead.

You will also recall my having served as Assistant Secretary of the Interior for Fish and Wildlife and Parks from 1977-1981 and for a very short while as Acting Secretary of the Interior. And so, I had a very direct interest and responsibility with the Federal Government for the kind of "treasure" I'll be asking you to protect today.

The Island Park dam, the site of the proposed Island Park hydroelectric project, was built approximately 50 years ago on the Henry's Fork of the Snake River in eastern Idaho. The dam is operated by the Bureau of Reclamation for irrigation and flood control. The dam is of earth and rock construction and lies in an earthquake prone area. This section of the Henry's Fork river lies immediately west of Yellowstone Park in some of the most beautiful and geographically picturesque areas of the west.

Below the Island Park dam for the next 60 miles lies the world famous Henry's Fork of the Snake River. The Henry's Fork is regarded by many as one of the world's—if not the world's—finest dry fly trout fishery. The natural beauty, abundant wildlife, large rainbow trout, and immense insect hatches make it a fisherman's mecca. Thousands of people from across the world bring in millions of dollars to the economy of eastern Idaho. the Henry's Fork River is regarded as a mecca for trout fishermen, much as Mount Everest would be to the mountain climber; it is the ultimate challenge. We believe that there are certain treasures which simply must be preserved in spite of what is often called "progress" or "economic development." The Henry's Fork is one of those treasures similar to the nearby Yellowstone National Park which was set aside by our forefathers many years ago.

The ecology of the Henry's Fork runs on a delicate equilibrium. The winters are long and harsh; the summers dry and warm. The Island Park dam and the large body of water behind it, moderates the temperature, oxygen, and other parameters to provide for an outstanding fishery. Our concerns are of course that any interruption of this delicate balance will influence the river and its living things unfavorably.

Hydroelectric projects can pose major ecologic threats.

1. The dissolved oxygen may be altered.
2. Turbines and high flows compress water and result in nitrogen supersaturation, giving trout "the bends." it is called nitrogen gas disease and can affect the trout adversely.
3. Siltation during construction can have a major impact upon the spawning habitat by silting in the spawning gravel of the trout.
4. Water temperatures can be adversely affected by the hydro projects, can adversely raise temperatures during the hot summer months, or excessively lower temperatures during the winter when cold air or oxygen are mixed.
5. Turbines kill fish.
6. Dams can be weakened in construction.

Although the developers have attempted to address each one of these issues in their FERC license, we believe it is unlikely the water quality and fishery can be maintained. To our knowledge, the technology to maintain oxygen and prevent nitrogen disease has not been adequately developed. There is no guarantee for prevention of siltation during and after construction. The maintenance of safe temperatures for both winter and summer has not been adequately addressed. Dam safety is of major concern; the present construction plans call for removal and rebuilding of one half of the dam.

For over six years, Professor John S. Griffith, Ph.D. at Idaho State University's Department of Fisheries Ecology, has studied the Henry's Fork River in great depth. The research has resulted in volumes of important data concerning the fishery and its ecosystem. Dr. Griffith, who is regarded as the fisheries authority on the

Henry's Fork, expressed the following concerns, which are excerpts of his enclosed letter to you. "The Henry's Fork, in our opinion, is simply too valuable a legacy and international landmark to take any risk with."

Likewise, as noted in the FERC license, the U.S. Department of the Interior, the Idaho Fish & Game Department, and the Greater Yellowstone Coalition "express concerns that the project may cause adverse impacts to fish and wildlife resources in the area."

Our second objection to H.R. 3694 is the $1 million provision which is a direct payment to a private developer to pursue the hydroelectric development and the risks which we have discussed. As taxpayers and concerned citizens, we express our concern in light of the fact that the energy tax credits for small hydro development have expired, and this would be a dangerous precedent to set, to continue the philosophy of those tax credits. Our national debt is on the rise, our U.S. Treasury threatens default, and we as taxpayers object to a private developer receiving taxpayers' money to take the risk on one of our national treasures.

Thank you!

[Enclosure.]

DEPARTMENT OF BIOLOGICAL SCIENCES,
IDAHO STATE UNIVERSITY,
Pocatello, ID, July 18, 1990.

Mr. ROBERT HERBST,
Trout Unlimited, 501 Church Street NE, Vienna VA.

DEAR MR. HERBET: I write concerning H.R. 3694 and the pending Fall River Rural Electric hydroelectric project (FERC no. 2973) at the Island Park dam on the Henry's Fork of the Snake River, Idaho.

My graduate students and I have been conducting a number of research activities in the project area over the last six years and we anticipate continuing these efforts in the future. We have conducted baseline assessments of the trout population and are investigating summer and winter habitat use, fish movement, and diet in an effort to better understand factors affecting production of Henry's Fork rainbow trout.

After attending several scoping meetings and hearings regarding the proposed project and reviewing the FERC license articles, I remain very concerned that the project poses a significant risk to thin fishery. While the FERC Environmental Assessment provides a good review of the situation, and the license articles are well intended, the fact remains that design details (especially the aeration system) are still "evolving." In my opinion, the operation of the project as it is presently conceived will not enhance the existing environment for trout downstream from the project, and it has not yet been demonstrated that project construction and operation will maintain existing conditions.

Please contact me (phone 208/236-2116) if I can provide additional information.

Yours truly,

J.S. GRIFFITH,
Professor of Ecology.

Senator BRADLEY. Thank you very much, Mr. Herbst, for your testimony.

Admiral Greene.

STATEMENT OF REAR ADMIRAL JAMES B. GREENE JR., U.S. NAVY

Admiral GREENE. Mr. Chairman, thank you very much.

I appear today before you in a personal capacity, as one who has known and loved the Henry's Fork for many years, and although I would not presume to speak for the many thousands of trout fishermen throughout the world who annually make the trek to Henry's Fork for some of the finest fishing in the world, I do anticipate that my testimony will reflect their feelings.

I have just completed another fishing trip to Henry's Fork, a saga or a trek that I have taken since 1965, and I was surprised to again find this hydro project on the agenda, and further surprised to find that it had passed the House under a suspension of the rules which allowed no public debate on the issue. So I am indeed grateful for you to have the opportunity to speak for many fishermen throughout the world at this hearing.

In honoring your commitment to try to speed this up, I will not describe the river to the extent that I was going to, but I will just suffice to say that it is a world class trout fishery, as well as supporting many species of wildlife that are on the verge of extinction.

The critical part to recognize is the best of the trout fishery is right at the base of the Island Park dam, which is where basically the Henry's Fork River emanates.

Born and raised in New Jersey, I am a career naval officer and, as you can appreciate, because of the transient nature of that profession there are few constants. For me, Henry's Fork of the Snake River has been one of those constants, a place where a few days spent will provide a year of sustenance no matter where that year may be spent—Vietnam, the Persian Gulf, Indian Ocean, or here in the battles of Washington.

I do not pretend to be an expert on the environment or the proposed project, but in my view this project has high risk with potential for devastating effects on the wildlife and the fishery of Henry's Fork.

A large majority of the river flows through the Harriman Ranch, which was turned over by the Harriman family to the State of Idaho. The ranch is an area that the Ambassador worked hard and long to preserve and protect through the years, and he intended, I think, that it continue to be used by the public. I would hate to see that disturbed.

Therefore, I think this is a serious mistake and it places at risk a national, indeed international, treasure through the use of an unproven oxygenation system and inadequate environmental safeguards. Simply put, Henry's Fork is no place to conduct an environmental experiment. If the oxygenation system does not work, the damage to the fishery will indeed be severe, not to mention what might happen to the wildlife, like trumpeter swans, that thrive off that fishery as well.

People like me are very vulnerable on issues like this, in that we are scattered throughout the world and really have no organization to represent us. From what I hear today, I am probably bringing a different perspective to this testimony than anybody else in the room might do.

We are very grateful, however, for the people like the Harriman family and Mike Lawson, who you will hear from, who in our absence are the riverkeepers for this system and have done so well through the years in helping us maintain this superb fishery.

In closing, I would like to emphasize to you the national and international stature of this river and the small margin of error that exists in an area like this, that is subject to such severe winters. There indeed is a delicate balance and it must be kept.

In my opinion, the risks associated with this project far outweigh any economic benefits that might accrue, and indeed, if it does not work, the economic disaster that will occur to this area due to the loss of fishery will be very severe.

I appreciate the opportunity to testify and I hope this committee will see fit to reject this legislation. Thank you, Senator.

[The prepared statement of Admiral Greene follows:]

PREPARED STATEMENT OF REAR ADMIRAL JAMES B. GREENE JR., U.S. NAVY, ON H.R. 3694

Thank you Mr. Chairman. I appear before you today in a personal capacity—as one who knows and loves the area that will be affected by this project—to register my strong opposition to this bill. While I do not presume to represent any group of people, in all probability my testimony reflects the feelings of the thousands of fisherman who annually spend many enjoyable hours on the Henry's Fork of the Snake River. I am sure that if they were aware of this threat to the River, they would have found a way to communicate their feelings to the Committee.

I have just returned from a fishing trip to Island Park, Idaho—a trip taken annually since 1965. I was surprised to find that a proposal to build a hydro project on the Island Park dam was again being considered—this time in the form of legislation passed by the House without public debate under a suspension of the rules. All of us who know and love the Henry's Fork are grateful for your assuring a public hearing on the issue.

The Island Park Dam basically serves as the headwaters of the Henry's Fork. Immediately upon leaving the Dam, the water cascades through a deep canyon, Box Canyon, which houses some of the largest and strongest rainbow trout in the Nation--and they are renowned throughout the world for their fighting ability. After a few miles in the Canyon, the River emerges into a high mountain meadow as it flows for ten or so miles through the Harriman State Park before it then begins its descent to the Idaho farm lands through a series of spectacular waterfalls. The fishing and wildlife is world class throughout the length of the River but the best is located in the Canyon just below the Island Park Dam. It is therefore critical to note that whatever happens at the Dam will be felt immediately by the best of the trout population.

I am a career Naval Officer and because of the transient nature of the profession, there are few constants. For me, Henry's Fork has been one of the few—a place where a few days spent creates a year of sustenance—whether that year be spent in Vietnam, the Indian 0cean, the Persian Gulf or here in Washington. This River has been a source of great strength to me in facing whatever might arise in each of these areas. I do not pretend to be an expert on either environmental issues or (the proposed project but this project is clearly a high risk undertaking with potentially devastating effects on the Henry's Fork fishery and wildlife. Much of the River runs through the Harriman Ranch which the Harriman family turned over to the state of Idaho under strict use guidelines so that the land and water the Ambassador so loved and worked to conserve would be enjoyed by the public. It would be a serious mistake to place at risk this national—indeed international—treasure through the use of an unproven oxygenation system and inadequate environmental safeguards. Henry's Fork is simply no place to conduct an environmental experiment. If it fails to perform properly, we will have severely degraded the best rainbow trout fishery in the United States—not to mention the effects on the population of trumpeter swans, sand hill cranes and eagles.

People like me are especially vulnerable to issues like this in that we are located throughout the Nation and world and have no organized group. We are most thankful that there are people like the Harrimans and Mike Lawson who have done such a superb job through the years serving as the riverkeepers in our absence. I'd hate to return one day and find it no longer exists.

In closing, I'd like to emphasize to the committee the national and international status of this fishery and the small margin for error that exists in places like this which undergo severe winters. The balance is delicate. In my opinion, the risk this project brings to the Henry's Fork far out weighs any economic benefit that might be realized and indeed the economic damage to the area would be severe if the fishing were to be lost. I strongly urge the committee to reject this legislation.

Thank you again, Mr. Chairman, for providing an opportunity to those of us who love this River to have our voices heard.

Senator BRADLEY. Thank you very much, Admiral Greene. Mr. Lawson.

STATEMENT OF MICHAEL LAWSON, VICE PRESIDENT, THE HENRY'S FORK FOUNDATION

Mr. LAWSON. I will try to talk as fast as I can. As slow as I talk, I do not think I have ever said anything in 5 minutes.

Senator **Bradley**. You know what, Mr. Lawson? If what you are saying is interesting, the time available to you tends to expand.

Mr. **Lawson**. It is an honor for me to be here. I represent the Henry's Fork Foundation, which is a tax-exempt organization that represents over 1,000 sportsmen from across the country and the world. We have worked nearly a decade on stream enhancement projects and protection of wildlife on this famous resource. We wish to present opposition to the proposed Island Park hydro project and bill H.R. 3694.

I am going to try to be brief. In essence, I think just one statement would say it all. This bill asks the Government to make a payment to a private organization that has a disastrous track environmental record and in so doing, place at risk one of the greatest trout streams in the world.

I would like to just touch on a couple of things on my written testimony. I have lived in that area all my life and I am a fishing outfitter. I have had a business for 14 years, and we employ 10 fishing guides and four in-store employees. I am making this point so that the committee can realize that there are many other interests that have an economic stake in this river also.

The Henry's Fork Foundation has been opposed to this project since it was first proposed. We were an original intervener. Senator McClure made reference that we were in support of this. We have never been in support of it.

We believe that the ecological threats outweigh the possible economic benefits. The fact that the FERC license requires shutdown if requirements are not met is insignificant, because the resulting damage from a potential disaster could take years to repair.

The Henry's Fork is regarded as one of the great trout streams in the world and any impact from the project could be catastrophic. It is difficult to understand why a private corporation should receive a direct payment of $1 million and the projected economic benefits are very questionable. Even if the project was totally self-supported by the developer, the risk of an environmental calamity could be disastrous on the local economy.

To fund this with taxpayer dollars is indeed an outrage. We have had some drought in recent years which has impacted the Henry's Fork because of low stream flows in the winter, and we have received some national negative publicity and we have seen an economic downturn in the local economy. Several fly fishing shops, motels, and one restaurant have closed.

If there is a problem with this, there will be more negative publicity that will come upon the local economy.

I want to mention one more thing, and that is that I was on the advisory committee through the whole licensing process and I was not aware that that meant that I was supposed to support the project, because that reference has been made today.

Several of us never supported the project, but we were on the advisory committee to try to put input in to try to cover the bases should this go in.

Before I close, Matthew Huntington of American Rivers Inc. has prepared a written testimony which I have here and he has asked me, with your consideration, if that could be submitted to the record.

Senator **Bradley**. At your request, it will be submitted to the record.

Mr. **Lawson**. Thank you.

To sum it up, there are many other hydro sites in Idaho and the West that would have much less potential economic and environmental risks. This is just too valuable of a resource to take chances with.

Again, I have been honored to be here today and grateful for the opportunity to present this testimony. Thank you.

[The prepared statements of Mr. Lawson and Mr. Huntington follow:]

Prepared Statement of Michael Lawson, Vice President, the Henry's Fork Foundation

Mr. Chairman, Members of the Committee, it is an honor to present testimony to you. I represent the Henry's Fork Foundation, Inc., a non-profit, tax-exempt organization of over 1,000 sportsmen and women from across the country who recognize the Henry's Fork as one of the finest fisheries in the world. Our organization has worked for nearly a decade on stream enhancement projects and protection of the wildlife of this famous resource. We wish to present opposition to the proposed Island Park Hydroelectric project and H.R. 3694.

I am 43 years old; I was born and raised in the upper Snake River valley and have fished the river most of my life. I own, and operate as an outfitter, a full service fly fishing, retail and guide service located in Island Park on the banks of the Henry's Fork. I employ 10 fishing guides and 4 store employees. I've been in this business for 14 years. My family derives its income from the fishing business, as do many of the other residents of upper Fremont County, Idaho where the Henry's Fork River is located.

ENVIRONMENTAL CONSIDERATIONS

The Henry's Fork Foundation has been opposed to this hydroelectric project since it was first proposed. We also express our opposition to H.R. 3694. We believe the potential ecologic threats outweigh the economic benefits. Although the FERC license addresses such issues as dissolved oxygen, nitrogen supersaturation, siltation, increased water temperatures, and adverse impacts during construction, we are very concerned that the technology to maintain these parameters has not been perfected. The developer of the hydro project has a poor environmental track record. The fact that the FERC License requires shutdown if requirements are not met is insignificant because the resulting damage from a potential disaster could take years to repair. The Henry's Fork is regarded as one of great trout streams of the world and any impact from the project could be catastrophic.

ECONOMIC CONSIDERATIONS

It is difficult to understand why a private corporation should receive a direct payment of $1 million in tax dollars. The "projected" economic benefits to the local economy are very questionable. Even if the project was totally self supportive by the developer, the risk of an environmental calamity would have disastrous effects on the local economy. To fund this project with taxpayers' dollars is an outrage.

Much of the economy of northern Fremont County is based on tourism. The notoriety of the Henry's Fork is worldwide. Impacts from recent reconstruction of the Island Park Dam and 1987-88-89 drought resulted in low winter stream flows the past few years. This has already created a noticeable decline in the fishery. The resulting negative publicity has already taken a heavy toll on the local economy. Several fly shops, motels, and one restaurant have closed. As a business owner, I have been very concerned about the future of my business. Studies funded by the Henry's Fork Foundation have identified adverse impacts to the fishery and steps have been taken which will bring the fishery back. Construction of the Island Park Hydro Project may result in the further decline of the fishery and result in more negative publicity.

SUMMARY

There are many other hydro sites in Idaho and in the west which would have much less potential economic and environmental risks. The Henry's Fork of the Snake River is too valuable a resource to take any chances with, and certainly too valuable to risk for the economic benefit of a private hydroelectric developer.

We are honored to be able to present this testimony before you, and are grateful that the democratic process allows citizens such as ourselves to have input.

PREPARED STATEMENT OF MATTHEW H. HUNTINGTON, CONSERVATION ASSOCIATE, AMERICAN RIVERS, INC.

My name is Matthew Huntington, and I am the Conservation Associate with American Rivers, Inc., the nation's principal river saving organization. I am pleased to offer testimony on H.R. 3694, a bill which would authorize the expenditure of one million dollars to reimburse the Fall River Rural Electric Cooperative for expenses associated with development of the Island Park Hydroelectric Project on the Henry's Fork of the Snake River in Idaho.

American Rivers opposes enactment of this legislation and construction of the Island Park Project. We believe there is a substantial risk that construction of the Island Park project would have serious adverse effects on the Henry's Fork. In addition, we think the expenditure of $1,000,000 to subsidize this project would be a totally unjustifiable waste of the Federal taxpayer's money.

The Henry's Fork is an extremely fragile and vulnerable resource. The river is widely acknowledged as one of the best dry fly trout fishing rivers in the country, perhaps the world. Associated with the worldwide acclaim of this trout fishery is a healthy tourism and outfitting industry, bringing millions of dollars to eastern Idaho each year.

Even if the most advanced environmental protection measures were employed in the construction and operation of the Island Park project, adequate technology is not available to maintain oxygen levels in the river and prevent nitrogen disease in resident fish. Siltation from project construction also is likely to adversely affect the fishery. The value of the Henry's Fork as a jewel of fly fishing, and its economic importance to Fremont County, Idaho should be given precedence over a non-federal hydro project which jeopardizes the river.

In 1986, in the Electric Consumers Protection Act, Congress recognized the outstanding values of the Henry's Fork by establishing a general ban on hydro development on the river and expressly prohibiting the Island Park project, subject only to the condition that the Federal Energy Regulatory Commission could issue a license for the project if the Commission determined that there would be no significant environmental damage resulting from the construction and operation of the project. In view of Congress' earlier concern for protecting the Henry's Fork, it makes no sense to single this project out for a special subsidy designed to encourage the project to proceed.

The ostensible justification for H.R. 3694 is that an expenditure of taxpayer funds is supposedly justified to compensate the project sponsor for tax credits it arguably would have received if the application process had proceeded more quickly. American Rivers believes that the tax credits that formerly supported hydroelectric development were unjustified in the first place and they should not be reintroduced indirectly, for this or any other project, through a direct Federal appropriation.

This proposed expenditure makes even less sense in the context of the comprehensive Federal tax reform effort in 1986. Since marginal tax rates were significantly reduced as a result of tax reform, an appropriation that is intended to be a substitute for a tax credit available under the old tax regime actually would produce a windfall for the project sponsor. Furthermore, it would be patently inequitable to single out this Federal taxpayer for special treatment under the Federal tax laws—precisely the type of inequity tax reform was designed to eliminate.

Mr. Chairman, we believe that this bill constitutes bad policy and would set a bad precedent for the future. Especially in light of the severe limitations of Federal financial resources, this and other hydro developers should be left to operate in the free-market system without taxpayer assistance.

This concludes my statement. Thank you for the opportunity to present this testimony.

Senator **BRADLEY**. Thank you very much, Mr. Lawson, for your testimony and for coming all this way.

Mr. Reynolds.

STATEMENT OF DEE M. REYNOLDS, GENERAL MANAGER, FALL RIVER RURAL ELECTRIC COOPERATIVE

Mr. **Reynolds**. Thank you. Mr. Chairman, members of the subcommittee:

My name is Dee Reynolds. I am the General Manager of Fall River Rural Electric Cooperative. Fall River is a nonprofit, consumer-owned electric cooperative, which means that any benefit to the cooperative equates to being a direct benefit to every member.

I would like to summarize my written testimony, being that that testimony has been submitted for the record.

Senator **Bradley**. Your testimony will appear in the record.

Mr. **Reynolds**. While Fall River serves some 7200 consumers in Idaho, Montana, and Wyoming, 3,000 of those members are permanent residents. The rest of them are people that come up there for the summers, and some for the winters, to enjoy the country.

Over 450 are also irrigators, who depend upon the Fall River for electricity that is required to irrigate their crops. To the irrigators in particular, and to every member in general, the cost of electricity is a very important factor in determining their standard of living.

Several years ago, Fall River filed on several potential hydro sites. Two of those sites were situated in such ideal locations that the engineering staff determined they felt that they were the ones that should be developed. One of these sites is on the Teton River near Felt, Idaho; the other is on the Henry's Fork of the Snake River at the Island Park dam.

However, the cost of developing either or both of these sites would have required the cooperative to borrow several million additional dollars. If Fall River had increased its debt, there would have been a large increase in the amount required to service that debt.

The larger the debt, the greater the amount the Rural Electrification Administration requires the cooperative to collect as margins to satisfy times interest earned ratios. Thus, for Fall River to build the hydros it would have required Fall River to have again increased its rates, which was unacceptable to either the board or the members of the cooperative.

After considering all the factors, Fall River determined that it did not want to lose the two hydro sites, but that it could not afford to construct the facilities needed there. After much thought, feelers, and subsequent negotiation, it was determined by the board of directors and management of the coop that the two sites ought to be leased to Bonneville Pacific Corporation for development.

The appropriate contracts were then prepared and properly executed. Bonneville Pacific pursued the development of both projects in a timely manner. As a result, the Felt site was able to be completed in 1987.

However, because of special Congressional legislation which has already been talked about here several times, the Island Park hydro project was deferred.

Every consumer of Fall River, whether residential, seasonal, commercial, or irrigator, has a direct interest and will benefit in seeing that this hydro project is built. The site is a wise use of existing facilities. It will be developed under the most careful scrutiny and under full compliance with the Dam Safety Act.

The hydro will produce immediate and long-range revenue for the cooperative. The development of the hydro is only one of many steps that our cooperative's management knows to be necessary to continue to hold the line on electrical rates.

Fall River has tried our best to make sure that we and the contractor have covered all of the bases environmentally, safety, and all those things that would be considered in going in to put a hydro site on an existing dam. We feel like we have jumped through all of those hoops. We feel like we have been successful in doing that and provide a plan that will protect the dam, will protect the fish and the downstream of the Henry's Fork.

I also am a fisherman and ~~have~~ great satisfaction in the Henry's Fork and in what it produces for us, and I think that Henry's Fork will be protected under the construction of this Island Park hydro project.

The $1 million that we are talking about, where does that really go? $637,000 of it will go for the tail race extension oxygen diffuser system. $150,000 will go to the automated dam outlet gates. Those gates will open and close automatically to make sure that the oxygenation stays proper. Also, $50,000 goes to monitoring equipment down the river to make sure that all of that is in proper order, and $350,000 to an environmental coordinator who will make sure that all of these conditions are being met.

If Congress can in 1986 step in and single out Island Park, we believe it is only proper that Congress can also step in in 1990 and set aside the $1 million that we need in order to complete this project. We do not believe it is precedent setting. We believe it was singled out in 1986 and singling it out now is not precedent setting.

We thank you for us being able to testify.

[The prepared statement of Mr. Reynolds follows:]

PREPARED STATEMENT OF DEE M. REYNOLDS, GENERAL MANAGER, FALL RIVER RURAL ELECTRIC COOPERATIVE

Mr. Chairman & Members of the Subcommittee, my name is Dee M. Reynolds. I am the General Manager of Fall River Rural Electric Cooperative in Ashton, Idaho. Fall River is a non-profit, consumer owned electric cooperative which means that any benefit to the Cooperative equates to being a direct benefit for every member.

While Fall River serves over 7,200 consumers in Idaho, Montana and Wyoming, 3,000 of these member-consumers are permanent residents of the area. Over 450 are also irrigators, who depend upon Fall River for the electricity that is required to irrigate their crops. To the irrigators in particular, and to every member in general, the cost of electricity is a very important factor in determining their standard of living.

Fall River is a preference customer of Bonneville Power Administration (BPA), of Portland, Oregon. Since 1981, BPA has increased the wholesale cost of power by 500%. The days in which BPA could develop additional and relatively inexpensive hydro power are over. We can be assured that from now on, any new BPA resource that comes on line, will be considerably more expensive to produce than any resource that has been developed to date.

A considerable portion of BPA's power is presently purchased from Canada. Pursuant to treaty, BPA purchased a large percentage of the hydro power generated on the Columbia River in British Columbia. For several years the Canadians have felt that the power was being sold to us for too little. The treaty calls for the contracts to expire in the early 1990's. While negotiations are presently underway with Canada for BPA to continue to purchase the British Columbia Hydro power, we can be assured that in the end, the price will be considerably higher than what we are paying now.

Several different organizations have been studying and projecting the power needs for the area that BPA serves. Even the most conservative of these studies indicate that by 2001, when considering all resources available to BPA, there will be a shortage of available power in the Northwest. This means that more resources will have to be developed. When one considers the development of new resources, the new treaties with Canada, and other normal growth and inflationary patterns, the sum total is that we can count on even higher rates for all BPA customers. BPA acknowledges now that the BPA system is in resource balance.

At Fall River we are keenly aware of how the consumer feels about the continual increase in rates. At the direction of the Board of Directors, our management has undertaken several steps to either hold the line or to reduce the cost of delivering electricity to the consumers. It is a known fact that the Cooperative has little control over the wholesale cost of power and even the non-power costs are somewhat fixed and difficult or impossible to change. For example, the mortgage, both principal and interest, have to be paid. Materials for maintenance and repairs must be paid for, and the employees to run the cooperative and serve the consumers, also have to be paid. Thus, there are a few areas, but only a few, where management can effect a reduction to the retail cost of power. With that in mind, in 1988, Fall River was able to reduce its over-all administrative costs by approximately 5%. So far in 1990, administrative reductions have amounted to over 1% of the total revenue taken in. However, there are only so many of these kinds of reductions that can be made without drastically effecting the ability of the Cooperative to properly serve its consumers.

Fortunately, several years ago, Fall River filed on several potential hydro sites. Two of those sites were situated in such ideal locations that the engineering staff felt they should be developed. One of these sites is on the Teton River near Felt; the other is on the Henry's Fork of the Snake River at the Island Park Dam. However, the cost of developing either or both of these sites would have required the Cooperative to borrow several additional millions of dollars. If Fall River had increased its debt, there would have been a large increase in the amount required to service that debt. The larger the debt, the greater amount the Rural Electric Administration (REA) requires the Cooperative to collect as margins to satisfy Times Interest Earned Ratio (TIER). Thus, for Fall River to build the hydros, it would have required Fall River to have again increased its rates which was unacceptable to either the Board or the members.

Under the terms of Fall River's filing on the hydro's, it was necessary that the two sites must either be developed, or they would then be subject to a third party filing on and receiving the benefit of the site. In addition, Congress had also passed legislation which mandated that private individuals could require an existing utility to purchase power from small generating companies, and pay that utility's "avoided" costs. That law is commonly referred to as PURPA, which stands for the Public Utility Regulatory Policy Act. PURPA and other legislation granted special tax credits and considerations for those individuals or companies who were willing to construct qualifying generating plants.

After considering all factors, Fall River determined that it did not want to lose the two hydro sites, but that it could not afford to construct the facilities needed there. After much thought, "feelers" and subsequent negotiations, it was determined by the Board of Directors and the management of Fall River, that the two sites ought to be leased to Bonneville Pacific Corporation for development. The appropriate contracts were then prepared and properly executed.

Bonneville Pacific pursued the development of both projects in a timely manner. As a result, the Felt site was able to be completed by 1987. However, because of special congressional legislation concerning whether the Hydro would effect the wild and scenic values of the Henry's Fork, the Island Park project could not be pursued. Finally, in 1987, it was determined that the development of the Island Park Hydro site would not effect the wild and scenic value of the Henry's Fork. Fall River and Bonneville Pacific then pursued the necessary FERC license for the project. There was much publicity given to the license, and by every commonly accepted means, notice was given to the public that the license was pending. Anyone with any objection to the license was invited to voice their concerns. All potential problems or objections to the hydro were discussed, weighed, and evaluated, every appropriate adjustment was made. This was done at no small expense, and everyone who expressed any legitimate concern about the hydro was answered. In fact, because of these agreed to adjustments, and concerns, this proposed hydro was actually "signed off on" by environmentalists, wildlife and fishermen, the Bureau of Reclamation, and other involved parties. The end result was that there were no objections raised to FERC in issuing Fall River the required license.

While the FERC licensing was going on, the Idaho legislature passed legislation which required their Water Resource Board to consider Fall River's hydro site. Without going into any details, Fall River made the necessary petition to obtain approval from this Board. Since there had been no objections before FERC, it was presumed there would be no real objections before this Board. Accordingly, attention was directed towards presenting a full written record, rather than concentrating on oral testimony. Fall River neither expected nor anticipated that any responsible group would voice new opposition to this request. No new dam was being built; the quality of the water would be enhanced below the dam; the only water to be used was that authorized by the Fremont, Madison Irrigation Company; the construction of the hydro would have to comply with the dam safety act; and the owner of the dam, the Bureau of Reclamation, was lending its support.

So as to set the record straight, and to remove any misunderstandings, the Board of Directors, with all 9 members present, unanimously voted on April 17, 1989, to reaffirm their total commitment to the completion of the Island Park Project. In addition, every employee of Fall River Electric is also 100% committed to this project.

Every consumer of Fall River, whether residential, seasonal, commercial or irrigator, has a direct interest and will benefit in seeing that this hydro project is built. The site is a wise use of existing facilities. It will be developed under the most careful scrutiny and under full compliance with the dam safety act. The hydro will produce immediate and long range revenue for the Cooperative. The development of the hydro is only one of many steps that our Cooperative's management knows to be necessary to continue to hold the line on electrical rates.

After a further review of the facts and records, we at Fall River feel confident that this Subcommittee will give its immediate approval to the project. We have limited time within which we can undertake construction, and we would like to undertake it without delay.

Senator **Bradley**. Thank you very much, Mr. Reynolds.

Mr. Mower.

STATEMENT OF CLARK MOWER, DEVELOPMENT DIRECTOR, BONNEVILLE PACIFIC CORP.

Mr. **Mower**. Thank you, Chairman Bradley and members of the subcommittee, my name is Clark Mower and I am the Development Director for Bonneville Pacific Corporation of Salt Lake City, Utah. Mr. Reynolds has just described the association between Bonneville and Fall River.

I have written testimony which I have submitted and would hope that it could be included in the record, and then I would like to deviate from that testimony and address some of the following concerns that have been raised.

Senator **Bradley**. That will be fine. Your statement will be in the record.

Mr. **Mower**. Thank you.

I have listened to the testimony of the opponents to H.R. 3694 and find it both interesting and amusing and somewhat puzzling. My understanding was that the purpose of this hearing was not to debate the technical and environmental merits of the project, because those issues have been addressed in the approval process previously completed for this project.

For example, this project has been subjected to the environmental assessment process by the FERC during the licensing procedure and the U.S. Forest Service in the issuance of conditional use permits for the project. The project also was subjected to an environmental review by the State of Idaho in their exemption of the project from the protected river status.

In every instance, the public and the special interest groups and the State and Federal agencies were involved, and in every instance the project received a finding of no significant impact for construction of this project. And in each of these processes, Mr. Lawson and others were present and participated.

These were the process in which the technical issues were raised and the technical issues were addressed and, as I say, in every instance the project received approval from the Federally mandated process.

However, here today we again hear that the project does not have the expertise and the technology to protect the river and to satisfy the ECPA requirements, particularly in the safety of the dam, water temperatures, water siltation during construction, and dissolved oxygen and nitrogen supersaturation.

I am puzzled by these assertions because each and every one of them were exhaustively, and I do mean exhaustively, addressed in the process that we followed to date. These have been examined by the project advisory committee, the Federal Energy Regulatory Commission, the U.S. Fish and Wildlife Service, the U.S. Forest Service, and the Idaho Department of Fish and Game prior to license issuance.

The advisory committee that has been referred to was made up of several Federal, State, and local agencies, as well as special interest groups. And as Mr. Lawson testified, he participated in those hearings and also in those committee meetings.

I would also remind him and others that the advisory committee, the Fall River Cooperative, and Bonneville agreed with the agency and the environmental communities to recommend FERC license provisions which would: one, require special river aeration systems to protect and enhance dissolved oxygen levels at the base of the dam; two, require expensive and sophisticated river monitoring; and three, build a special automated link between the project outlets and the existing dam outlet, so that if the operating standards were ever violated an immediate switch could be made to the old river regime.

These conditions were unanimously approved by the advisory committee and were included as conditions in the license for the project. Those license conditions are attached to the license as issued by the FERC in October of 1988.

The advisory committee also approved a resolution approving construction of the project subject to the license conditions.

Bonneville realizes, however, that we are not here today to talk about the merits of the project as much as to discuss why the relief proposed by H.R. 3694 is justified. In so doing, I would urge the subcommittee to keep two important factors in mind:

One, the Island Park project was well along in the licensing process when Congress intervened in 1986. Had Congress not intervened, there is no doubt that we would have completed the project before the end of 1988 because, as I have mentioned, we are located on an existing dam and the access roads are already in place. Therefore, the Congressional intervention is at the heart of the dilemma.

The reason we are asking for approximately $1 million in special environmental concessions to the cost of the project to satisfy

ECPA is that we had at the time of license submittal an 11 percent energy tax credit available and also accelerated depreciation available to offset these. Because of the delays caused by ECPA processing, these funds are now not available to us.

In summary, Bonneville believes that the requested $1 million appropriation of H.R. 3694 will benefit the taxpayers and at the same time promote development of an environmentally sound project which has met all of the special demands which Congress has placed on it. We feel that principles of equity and the time and effort which have gone into bringing the project this far justify the granting of final relief of H.R. 3694 which will ensure the Island Park project's completion.

We would urge the approval of this resolution before you. Thank you.

[The prepared statement of Mr. Mower follows:]

PREPARED STATEMENT OF CLARK MOWER, DEVELOPMENT DIRECTOR, BONNEVILLE PACIFIC CORP.

Mr. Chairman & Members of the Subcommittee, my name is Clark Mower and I am a Development Director for Bonneville Pacific Corporation of Salt Lake City, Utah. Bonneville is a corporation specializing in the development of "alternative" sources of energy (cogeneration, hydro, geothermal, wind, etc. and since 1985 has worked with the Fall River Cooperative of Ashton, Idaho to obtain a license for, and to build, the proposed Island Park hydroelectric project. Under our arrangement with the Cooperative, Bonneville will be the primary investor in the project and will also act as the Cooperative's expert in designing and building the project.

Bonneville believes the Island Park project is especially meritorious because, unlike many other projects it will be built at an existing dam and will utilize the river flows released for irrigation purposes, and will require no new dam, diversion or other alteration of river flow. Further, the project is located in relatively gentle terrain and the roads to access it are already in place. Therefore, this is a project that can be built without many of the environmental risks that are involved with new construction or road building. Indeed, we believe this is exactly the type of project that Congress has tried to encourage through the enactment of tax credits and PURPA.

Congress apparently also believed the project was worthwhile because in 1986 it allowed the Island Park project to proceed at the same time that it banned other hydro projects on the Henry's Fork. Under that law, however, we were singled out to meet new and special environmental criteria which applied to no other FERC applicant. In addition, all this happened in the middle of our ongoing licensing, so we were essentially required to begin the licensing process anew in late 1986.

The first step we took to meet the new requirements mandated by Congress was to form a special project Advisory Committee, composed of project proponents, Federal and State agencies, special interest groups and environmentalists. The Committee's initial consensus action was to select a special "Environmental Coordinator" to oversee the project's planning, construction and initial operation. The Advisory Committee solicited proposals from a list of qualified firms. Following evaluation of the proposals the Advisory Committee selected Fisheries West Inc. of Boise, Idaho to serve as the Environmental Coordinator. Fisheries West came strongly recommended on the basis of their past work with the Henry's Fork Foundation and the Idaho Sportsmens Coalition. Indeed, at least three Fisheries West advisors are to this day on the advisory "Committee" of the Henry's Fork Foundation, which curiously is now opposed to the project.

The Advisory Committee, the Fall River Cooperative and Bonneville agreed with the agencies and environmental community to recommend FERC license provisions which would (1) require a special river aeration system to protect and enhance dissolved oxygen levels at the base of the dam; (2) require expensive and sophisticated river monitoring; and (3) build a special automated link between the project outlet and the existing dam outlet so that if the operating standards were ever violated an immediate switch could be made to the old outlet regime.

These conditions were unanimously approved by the Advisory Committee and included as conditions in the license for the project. The advisory committee also approved a resolution approving construction of the project subject to the license conditions. This all transpired in the summer of 1987, and we were anticipating FERC license issuance that fall, in time to complete the project in 1988.

The sum total of these special environmental concessions was estimated at the time to cost in excess of $1 million, and are now estimated at approximately $1.2 million, and that figure does not include additional environmental costs to keep the Advisory Committee intact and functioning for several years.

Bonneville realizes, however, that we are not here today to talk about the merits of the project as much as to discuss why the relief proposed by H.R. 3694 is justified. In so doing, I would urge the Subcommittee to keep two important facts in mind:

1. The Island Park project was well along in the licensing process when Congress intervened in the process in 1986. Had Congress not intervened, there is no doubt that we could have completed the project before the end of 1988, because, as I have mentioned we are located at an existing dam and the access roads are already in place. Therefore, the Congressional intervention is at the heart of our dilemma.

2. The reason we were able to agree to adding approximately $1 million in special environmental concessions to the cost of the project to satisfy ECPA was that we had the 11% energy tax credit available until the end of 1988 to finance those concessions. Until very late 1987, we believed the FERC license would be issued almost immediately, so we expected the energy tax credits would remain available.

What ultimately happened, however, is that for procedural reasons the FERC licensing dragged on until October 1988, and by the time the license was finally issued, there were only two months remaining on the energy tax credits. Without the tax credits, or a similar appropriation, roughly 11% would be added to the project's cost, making it an imprudent investment for Bonneville or anyone else.

Bonneville believes this case represents a simple matter of equitably restoring the status quo. The payroll tax benefits of project construction alone will equal the appropriation of H.R. 3694, so this project will not cause any loss to the taxpayers if it is built. Over the longer term, the project will generate in excess of $13 million in taxes and other revenues to the United States and the State of Idaho, and that represents a very positive revenue stream. Since this project is the only project whose licensing process was interrupted by an act of congress, funding this onetime payment of $1 million will not establish a precedent for similar payments to any other projects.

Finally, Mr. Chairman, we are just now beginning to hear talk of potentially large cutbacks in hydro generation in the northwest that may be implemented in the coming years to protect dwindling salmon runs. If that occurs, it will combine with the northwest's booming economy to place great pressures on power supplies and force the construction of new power generating capacity on a massive scale. Rather than have the power come from fossil fuel or nuclear sources, Bonneville believes small projects such as Island Park make excellent sense, especially where they can be developed with a minimum of new structures and roads.

In summary, Bonneville believes that the requested $1 million appropriation of H.R. 3694 will benefit the taxpayers and at the same time promote an environmentally sound project which has met all the special demands which Congress has placed on it. We feel that principles of equity and the time and effort which has gone into bringing the project this far justify granting the final relief of H.R. 3694 which will ensure the Island Park Project's completion.

Senator BRADLEY. Thank you very much, Mr. Mower, for your testimony. Let me thank every member of the panel for their testimony.

I have a few questions. I am sure Senator McClure has a few questions as well.

Let me ask Mr. Reynolds or Mr. Mower. We got a document from what was purported to be the sponsors of the project last year and it said that you would be forced to abandon the project if the legislation did not pass by this past February. Here we are in July. Are you still in operation although no legislation was passed last year?

Mr. MOWER. I will address that if I might. You will find that activities on the Island Park project have been suspended and we are awaiting the outcome of this legislation. I can tell you, although I hate to admit it in front of the opponents of this project, that if the special legislation that we are requesting does not pass, the funds are not available to build the project.

The reason that it is continuing is that we have continually been told that we are just around the corner from some Congressional action and we have continued to fund and continued to hold onto that project. But as a businessman, I am sure that you realize that there comes a point in time when you have to cut your losses and walk away from it. And if this legislation does not pass, it is not a developable project, at least from our standpoint, from Bonneville's standpoint.

Senator **Bradley**. Now, do you have any concern about the precedent this sets?

Mr. **Mower**. Absolutely not.

Senator **Bradley**. So you would argue that, if one can demonstrate that a Federal action, any Federal action, delayed a project, construction of an apartment building, whatever, that had benefits in the tax code that were lost because of some change, say the 1986 Tax Reform Act, the taxpayers of this country must make good on that in the amount of the tax benefit was going to the recipient?

Mr. **Mower**. My best answer to that, Mr. Bradley, is that we have other projects which were hydroelectric projects that were in the mill at the same time that ECPA passed, that were not specifically named, that we have not come before you and asked for redress on.

No, the reason that we feel that this is a fair and equitable replacement is because of not only the naming of the project, but the significant delays that were incurred as FERC tried to respond to ECPA and decide how ECPA was in fact focused on this project. The licensing process, that normally takes 15 to 18 months, in this one took over 28 months or 29 months and delayed construction of this project significantly.

Senator **Bradley**. Well, I will just say to you that if I could have a dollar for every time somebody has told me that about the 1986 Tax Reform Act, my income would be dramatically increased, that they had made plans, they had hoped, they had counted the tax benefits into the plan, it did not come through and now they lost it, and what are you going to do about it?

Mr. **Mower**. My answer would be that we have other projects that we are not here addressing that were in that same mode, that were affected by that.

Senator **Bradley**. And if you could, try to be very specific as to the criteria that you would advise us to apply so as not to set an uncontrollable precedent here?

Mr. **Mower**. If a project is specifically mentioned in Federal legislation, I think that it ought to apply. And in this case, this is the only project that I am aware of that is specifically mentioned in the ECPA legislation by name and license number.

Senator **Bradley**. Okay.

Senator **McClure**. Mr. Chairman, may I make a comment on that point, because it goes to the heart of my concern. And I do not mean to personalize this too much, but meeting with the Henry's Fork Foundation and other people that are very much concerned about the fishery up there and then talking to project sponsors at the time, I was determined that we would extend the greatest possible amount of protection that had ever been extended anywhere, because this fishery is unique. It is important, and it was important that we made guarantees, so far as it is humanly possible that we make guarantees, that nothing was going to happen to adversely impact that fishery.

But it was my legislation that required them to jump through these extra hoops and meet these particular standards over a long period of time. It was my legislation that caused the delay, and I feel a very personal responsibility to people who were involved in it for having caused that and inadvertently caused them to miss the expiration date on the energy tax credits.

So there is a very specific reason why I feel strongly about it, and I think the project sponsors have a right to feel that there is a need for equity.

Senator **Bradley**. I note Senator McClure's genuine regret and also that the point that he made I think is very clear, that he feels responsible in part for your predicament, and I think that is an admirable human quality for him to have. The question is what we do about it, and that is really the purpose of today's hearing.

Let me, if I could, ask Mr. Reynolds or Mr. **Mower**. Do you think the Federal Government has any general obligation to financially support independent power producers?

Mr. **Mower**. No, I do not think they have a general obligation to. Dee?

Mr. **Reynolds**. No, I do not think so. But I certainly think that the Island Park project is different than a general appropriation of any kind. Just talking economically about the project, in the first 2 years during the construction it will more than pay back to the Treasury in payroll taxes that that has been expended.

Plus, over the life of the project it is going to have Federal income taxes of more than $9 million. It is going to have Bureau of Reclamation fees of about a half a million dollars. And it is going to also pay to the State of Idaho nearly $3 million in taxes.

So it has a great economic impact.

Senator **Bradley**. With all this financial potential in the project, and particularly to the State of Idaho, have you sought a financial commitment on behalf of the State of Idaho to the project like you are seeking from the Federal Government?

Mr. **Reynolds**. Fall River has not at this point. The financing and the construction we have leased out to the Bonneville Pacific Corporation. What they have informed me is, without this money, the project cannot go forward. That is where we stand.

Senator **Bradley**. And no financial contribution from the local community?

Mr. **Reynolds**. That is correct.

Senator **Bradley**. Or Wyoming or Montana or Utah?

Mr. **Reynolds**. That is correct.

Senator **McClure**. With one exception. The Fall River Cooperative patrons will pay. They will pay for the electricity generated, is that not correct?

Mr. **Reynolds**. Certainly that is correct, that the power producers there will eventually pay back the financing and the construction of the project.

Senator **Bradley**. Let me ask you, what percent of the total project cost is being borne by the Fall River Cooperative?

Mr. **Reynolds**. Zero.

Senator Bradley. Zero?

Mr. Reynolds. Except for the kilowatt hours that will be bought and sold to the members.

Senator Bradley. So other than that, there is no local cost sharing?

Mr. Reynolds. Other than time and materials that we have put into the project so far, we are not investing in it.

Senator Bradley. Let me ask you, Mr. Mower, since sometimes these dates are relevant: When did you start pushing for your extension of the hydro tax credit?

Mr. Mower. I can answer that very easily, yes. We started pushing in early 1988 for extension of the tax credit, when we realized that the license still was not issued and we were going to come down to a difficult wall that we had to surmount in some way.

Senator Bradley. Well, I withhold the remainder of my questions. Senator McClure.

Senator McClure. Thank you very much, Mr. Chairman. I will attempt to be brief, but I do want to make the record complete on some of the issues that have been raised.

Mr. Herbst, I do remember working with you with a great deal of pleasure at the time you were Assistant Secretary, and I remember particularly the courage that you had in the problem of the grey wolf in Minnesota, in which you lost a lot of hide and hair.

Mr. Herbst. I got roasted over the coals, did I not?

Senator McClure. Yes, you did. But I admired your integrity and your honesty and your willingness to confront what was, you believed, a necessary issue to confront at that time. I have admired you and respected you over the years since then as well.

I think that it is a fact admitted or observed by everyone who looks at the Henry's Fork that the impoundment of waters in the Island Park dam and the release of those waters through the dam have enhanced the fishery on the Henry's Fork, is that not correct?

Mr. Herbst. That is correct.

Senator McClure. That the management of that stream——

Mr. Herbst. But it is a very delicate balance. Any time you tamper with that balance, you are likely to go in the other direction.

Senator McClure. But the fishery there is better now than it would be in the absence of the dam?

Mr. Herbst. That is right.

Senator McClure. That is right, is it not?

Mr. Herbst. Well, it is that balance which has sustained a world class fishery, and tampering with it is very dangerous.

Senator McClure. I understand that. I understand your statement.

One of the things that you have—I think Mr. Lawson mentioned it, rather than you—is the concern over siltation, is that correct?

Mr. Herbst. I mentioned it as well, and the problem there is a spawning one. They like the clean gravel to spawn on, and any time you put silt over that gravel you disrupt the spawning cycle.

Senator McClure. I understand that concern. You made one statement which needs some explanation. I was going to say it is a misstatement, but it is not. It is inaccurate only by omission, not by commission, when you mentioned that the dam was built approximately 50 years ago. It was actually rebuilt in 1983, and it was rebuilt as an exercise in the safety of dams program, which I sponsored, with an appropriation which I sponsored, to get the dam rebuilt.

And there was much more danger, I would say, of any siltation in 1983 under that rebuilding of the dam, which we all supported, which was not objected to by anyone that I know of, in 1983 than there is today.

Let me turn first to Mr. Mower. Mr. Lawson, I think it was Mr. Lawson who said that you are going to cut over 50 percent of the height of the dam. What is the truth with respect to the extent of reconstruction?

Mr. **Herbst**. It was not the cut of half of the height. I think it was, Senator McClure, a reconstruction of 50 percent of the dam. I do not think any of us said that, but that is what it is.

Senator **McClure**. I look at what is in the Foundation's report. It says: "By cutting down into the dam over 50 percent of its height."

Mr. **Herbst**. I did not say that.

Senator **McClure**. Now, what is the truth?

Mr. **Mower**. I will address either one, because one is in error and one is grossly in error. It could be whichever one you prefer. First of all, the dam is 91 feet in height. The cut will be between 22 and 24 feet at its deepest point from the crest of the dam.

That is further compounded by the fact that water surface elevation is 5 feet below the crest of the dam, and so you would only be cutting approximately 19 feet, 18 or 19 feet, of an area that under high water conditions has water in it.

Secondly, the construction conditions mandate that construction not take place while water is at those levels, but that the construction in the dam take place at the low water elevation, which would mean that all of the crest of the dam that is cut or disturbed would take place above the low water line. It would not be wet at that time of year.

The length of the dam, the crest length is approximately 1200 feet. The cut itself at its widest point would be about 50 to 60 feet. So you would be talking about a 60 foot cut at the top, tapering down to 12 or 15 feet at the 24-foot level, in a 1200 foot by 91 foot dam at its widest and deepest points.

Senator **McClure**. It has been alleged, Mr. Mower, that the Bonneville has a poor record with respect to environmental concerns. I do not know whether you wish to comment on that or leave that comment spoken on the record. I do not know whether it is true or not, but I think you are entitled to respond if you wish.

Mr. **Mower**. Thank you. I would like to respond briefly to that. Bonneville has constructed over 28 projects. We have constructed approximately 14 projects in the State of Idaho. The record is referenced by Mr. Lawson and others is two projects in the State of Idaho where subcontractors created some problems in road construction. I think that is important.

In the construction of roads in difficult areas, there were some environmental problems, that Bonneville immediately stepped into and quickly alleviated, even though they were not responsible, directly responsible.

As an aside, on this project, first of all, we have existing roads in place. There is gentle slopes and no need for the kinds of construction techniques that were utilized in those two project areas.

Lastly, there is an environmental coordinator that has been hired and will be on site at all times with shutdown capability, so that if in fact they see something that they consider to be environmentally potentially hazardous they can shut the project construction down.

Senator McClure. I want to refer again to one of the environmental problems that was mentioned earlier, the possibility of the failure of the oxygenation system. If I understand correctly, the condition of the license is that if there is any failure on any one of these project constraints in construction or operation that the operation will immediately cease. Is that correct?

Mr. Mower. That is correct. I think it is important, Senator, if I might, just to say that there are levels at which oxygenation becomes critical, and the parameters set by the committee, of which Mr. Lawson is a member, that they will vote on, will be well above the fatal levels. So that is the point that it is shut down.

It is not as if you go to a DO level of zero before the project is shut down. There are levels that are addressed and that is the shutdown level, significantly above the hazardous level.

Senator McClure. As I understand, what would happen in the event that the project were completed and was in operation and you ran into trouble with dissolved oxygen levels that was in any way attributed to the operation of the project, you would immediately close down the project operation and continue the releases of water through the existing outlet works. Is that correct?

Mr. Mower. That is correct.

Senator McClure. Mr. Herbst, do you have any other understanding than that?

Mr. Herbst. Well, I think that is an evolving science, and I think you are continuing to appropriate moneys, for example, to the Tennessee Valley Authority to further develop oxygenation. And just the statement that it would be shut down indicates that the risk is there on the face of it.

Senator McClure. Well, I wonder if that is really true. Because you have brakes on a car indicates you are going to have a crash, I guess, by that logic.

Mr. Herbst. We have seen other projects where that problem has existed and the fish kill has taken place and then the shutdown has taken place after that.

Senator McClure. But you do understand, do you not, that they would immediately——

Mr. Herbst. Oh, I understand.

Senator McClure [continuing]. Immediately shut down the project and continue the releases through the existing works?

Mr. Herbst. I understand. I think in the FERC license the problems have been examined and as much as possible have tried to be addressed. The bottom line of my statement is that I think that this is the finest fishery of its type in the world and we should not risk it.

Senator McClure. Mr. Herbst, did you or your organization appeal the license decision?

Mr. **Herbst**. In fact, in the publication you were holding up there is a letter from the chapter president there.

Senator **McClure**. No, my question was whether you or your organization appealed the FERC license decision?

Mr. **Herbst**. We did not, no.

Senator **McClure**. And that was the time when these environmental concerns were addressed, was it not?

Mr. **Herbst**. Well, they are continuing to be addressed in this legislation.

Senator **McClure**. Well, that may be your perception of a way to attack what you seek to attack, but that is not a correct perception of this legislation, which deals only with the financial aspects of the construction of the project and has nothing to do, nothing to do with the environmental conditions established under the FERC license.

Mr. **Herbst**. Well, of course, we are a plaintiff in the entire FERC regulations as it addresses the environmental problems.

Senator **McClure**. I understand, but you did not appeal the FERC license.

Mr. **Herbst**. Not this specific one.

Senator **McClure**. Well, this is the specific one we are talking about.

Mr. **Herbst**. I understand.

Senator **McClure**. Okay.

Mr. Lawson, you are an outfitter.

Mr. **Lawson**. Yes, sir.

Senator **McClure**. I have been privileged to fish the Henry's Fork and, like you, Admiral, I enjoyed it, and I hope you had better luck than I did. You may be more skillful than I and maybe you get to spend more time on it than I do.

Admiral **Greene**. I do not get to spend the time I would like, but I have been very fortunate at it.

Senator **McClure**. And it is a beautiful stretch of river, and I admire and respect the people who are involved in outfitting and guiding on that stretch of river, that make it possible for people like myself to get there and not have to wrestle our own boats in and out of the water.

I suppose that, as is usual in these kinds of operations, that you put in and take out at various points along the Henry's Fork?

Mr. **Lawson**. Yes, sir, we do.

Senator **McClure**. Do you put in just below the dam at all?

Mr. **Lawson**. Yes, we do.

Senator **McClure**. Now, if I recall correctly, there was about 3 years ago or less some additional access to the water just below the dam, is that correct?

Mr. **Lawson**. Not that I know of. I am not sure.

Senator **McClure**. Well, is it not a fact that the Idaho National Guard bulldozers went down there and bulldozed some access through the bank and into the stream, to make it easier to get boats in and out?

Mr. **Lawson**. Yes, they improved the roads there. I am sorry, that is correct.

Senator **McClure**. That is correct, is it not?

Mr. **Lawson**. Yes.

Senator McClure. And that caused some siltation in the river, did it not?

Mr. Lawson. Yes, it did.

Senator McClure. And that is a point where you put boats in the river, and that operation of bulldozing that access into the river made it easier for you to get your boats into the river at that point?

Mr. Lawson. Well, yes, it did.

Senator Domenici. Senator McClure, might I ask you a question just with reference to time?

Senator McClure. If you will not ask the question, we will get there faster.

Senator Domenici. Okay.

[Laughter.]

Senator Domenici. I gather that means you have one more question.

Senator McClure. Mr. Chairman, I do not believe I have any further questions to ask at this time, but I will at the appropriate time expand the record perhaps by additional statements.

Senator Bradley. The record will stay open for questions and responses for 48 hours.

Senator McClure. I would like to make a comment to Admiral Green, because I do respect you individually and your concern about this river. But I will say very honestly to you, I am glad professional judgments do more about military policy than emotional statements by people who do not know anything about the facts.

Admiral Greene. Thank you, sir.

Senator Bradley. The Chair recognizes Senator Domenici. There is a vote on now.

STATEMENT OF HON. PETE V. DOMENICI, U.S. SENATOR FROM NEW MEXICO

Senator Domenici. Mr. Chairman, let me just state both to you and to my constituents—there are six here on the two remaining bills—we are over in the House on the economic summit and I will not be able to return. I just want to indicate my support for S. 1932 regarding the Vermejo Reclamation project and Vermejo Conservation District within it, that we are going to ask for transfer of one of the lakes; and for a bill which modifies the Elephant Butte Irrigation District regarding rights-of-way, and I understand both are recommended by the administration.

I would ask that my statement be made a part of the record.

Senator Bradley. Without objection, your statement will be part of the record.

[The prepared statement of Senator Domenici follows:]

Prepared Statement Hon. Pete V. Domenici, U.S. Senator From New Mexico

Mr. Chairman, Thank you for holding this hearing today on S. 1932, which will allow the Bureau of Reclamation to transfer a lake known as "Lake 13" to the Vermejo Conservancy District, and S. 1590, a bill to transfer certain rights-of-way to the Elephant Butte Irrigation District. Both of these irrigation districts are in New Mexico.

S. 1932 would clarify a law that I authored in 1980. That law, Public Law 96-550, was designed to defer payments and transfer certain facilities of the Vermejo Project from the Bureau of Reclamation to the Vermejo Conservancy District.

In the 1950's, the Vermejo Conservancy District and the Bureau of Reclamation entered into a repayment contract that obligated the District to pay the government $2.1 million for facilities that the Bureau constructed for the Vermejo Project. Over the years, the District was unable to make substantial repayments.

Title IV of P.L. 96-550 allowed the District to defer repayment and to obtain the project facilities. Under the law, the Bureau and the District were required to develop an amendatory contract on the repayment and transfer question. In order to protect the interests of the Maxwell National Wildlife Refuge, Title IV included language added at the Bureau's request that excluded fish and wildlife lands and any attendant water rights from the transfer to the district. This allowed title to those lands and waters to remain with the United States.

The amendatory contract required under Title IV has never reached final approval because an Interior Solicitor's Opinion has interpreted the fish and wildlife exception to prevent a transfer of Lake 13 to the District.

Despite the fact that Lake 13 has been a part of the Vermejo Project since 1954 and the Maxwell National Wildlife Refuge was not established until 1966, the Solicitor's Opinion argues that the use since 1969 of Lake 13 by the Maxwell Refuge under certain contractual arrangements means that the United States "holds" Lake 13 within the meaning of the transfer exception.

While the District does not dispute, and will honor, the contractual right of the United States to use Lake 13 for fish and wildlife purposes, Lake 13 should not fall within the transfer exception to Title IV.

Instead, the transfer exception refers to approximately 2,800 acres acquired by the United States from individual landowners for the Maxwell Refuge, and not to any project facilities acquired by the United States for the Vermejo Project.

Lake 13 is an important component of the District's water supply and delivery system. Releases from the lake are used to irrigate much of the 7,400 acres in the Vermejo Project.

Control of this integral part of the District's water system should rest with the District. Transferring Lake 13 to the District would permit more efficient operation of the Vermejo Conservancy District. In addition, this transfer is justified because the District has made a significant investment in Lake 13 by undertaking costly improvements and repairs to the lake.

Mr. Chairman, S. 1932 is needed to correct the erroneous interpretation by the Department of the Interior of Title IV of Public Law 96-550. It clarifies that Lake 13 should be transferred to the District under Title IV and also requires that the District continue to honor its contractual agreements with the Maxwell National Wildlife Refuge. This legislation is worthy of the Subcommittee's support.

Mr. Chairman, I also want to express my support for S. 1590, which Senator Bingaman introduced and I cosponsored.

S. 1590 would transfer certain rights-of-way of the Rio Grande Project to the Elephant Butte Irrigation District. The Elephant Butte Irrigation District made its final payment for its portion of the construction of the Rio Grande Project in 1971 and has operated the New Mexico component of the Rio Grande Project since 1979.

The Bureau of Reclamation has transferred some of the facilities of the New Mexico component of the Rio Grande Project to the District. S. 1590 would transfer all the remaining project facilities, consisting of rights-of-way, back to the District. These rights-of-way were either paid for by the local users or donated by them to the United States.

The transfer proposed by S. 1590 would promote more efficient operation and maintenance of the District. It is consistent with the directives of the 1902 Reclamation Act and a contract entered into by the Bureau and the District in 1979.

Mr. Chairman, I know that this Subcommittee deals with many bills of greater national significance than these, but I can assure you that no issue is of greater significance to these two districts than the passage of their respective bills. I hope that the Subcommittee will act quickly and favorably on these bills, and I greatly appreciate your consideration of these measures.

Senator DOMENICI. I have just one question of Commissioner Underwood. While you have no objection, to S. 1932 regarding Vermejo, you indicate that you want some language in the bill which I understand is already included in the cooperative agreements that the Bureau has with the district.

First, is that not the case?

Mr. UNDERWOOD. I believe, Senator, and I may be incorrect, but I believe that that applies to the Lakes 12 and 14. I do not believe that that applies to Lake 13.

Senator DOMENICI. Do you not have such arrangements with the other lakes, with reference to the other lakes?

Mr. UNDERWOOD. Yes, we do.

Senator DOMENICI. Then why?

Mr. UNDERWOOD. What we are looking for on Lake 13 is a permanent easement for conservation in terms of including the hunting, grazing, and fishing rights.

Senator DOMENICI. I thought you had that arrangement by cooperative agreement.

Mr. UNDERWOOD. To my knowledge, that is not the case. We do in terms of 12 and 14, but not on Lake 13.

Senator DOMENICI. Mr. Chairman, I believe we can work the matter out. If there is something further they need and they already have it, I do not see any reason to put it in the legislation, but we will be willing to work with them as it is reported out.

Could I thank you for calling the hearing and permitting us to have these two bills before the committee, Mr. Chairman. I appreciate it greatly.

Senator BRADLEY. The vote is in progress, 7 minutes remaining. I would ask all witnesses to stay. I have one or two questions for this panel, and then we need to move very quickly through the remaining panels.

Senator WIRTH. Mr. Chairman, before we go, if I might, Mr. Chairman. We have two witnesses here who were here on the Platoro Reservoir bill, S. 1118, who have got to go catch a plane and be back to Denver. May they put their statements in the record? Is that all right?

Senator BRADLEY. Their statements can be in the record, but one of them has to be here. I would like them to testify.

Senator WIRTH. Well, how soon can they testify, Mr. Chairman?

Senator BRADLEY. They could be offering their testimony while I go to vote.

Senator WIRTH. No, I have got to vote myself. I mean, I appreciate it, Mr. Chairman, and it is all very nice.

Senator BRADLEY. In order to accommodate the Senator from Colorado, what I will do is, if this panel will allow the Colorado panel to come to the table now, I will be back in 5 minutes.

Senator WIRTH. Great, that would be terrific.

Senator BRADLEY. And they will be out of here by 4:30.

Mr. HERBST. Are you asking us to stay, though, Mr. Chairman?

Senator BRADLEY. I am asking you to stay. Their testimony will be 5 to 10 minutes max.

[Recess.]

Senator BRADLEY. The subcommittee will return to order.

We have Mr. Todd Robertson, Colorado Environmental Coalition, Robert E. Robins of the Water Conservation District, and William McDonald of the Colorado Water Conservation Board.

Let me welcome all of you. The floor is yours, and the subject is S. 1118. Let us begin with Mr. Robertson—let us begin with whoever has to get a plane. All of you do? Okay.

Senator MCCLURE. Same plane.

Senator **Bradley**. Well, the interest is now on your side.

Senator **McClure**. If you are brief, you will make your plane.

Senator **Bradley**. You may summarize.

STATEMENT OF TODD ROBERTSON, PUBLIC LANDS COORDINATOR, COLORADO ENVIRONMENTAL COALITION

Mr. **Robertson**. Okay, I will talk real fast. We have a fairly short prepared statement.

I am pleased to be here to testify today on S. 1118 and thank you for the opportunity, Mr. Chairman. In addition to my own organization, the Colorado Environmental Coalition, I speak here today on behalf of The Wilderness Society, Colorado Trout Unlimited, and the Rocky Mountain Chapter of the Sierra Club.

S. 1118 would transfer the operation and maintenance of Platoro Reservoir on the Conejos River in southern Colorado from the Bureau of Reclamation to the Conejos Water Conservancy District. The district is the project's local sponsoring agency and the one obligated to repay the project costs to the United States.

Our keen interest in this proposal, Mr. Chairman, stems from the fact that the Conejos River is proposed for protection under the Wild and Scenic Rivers Act. The U.S. Forest Service has recommended that 13.6 miles of the Conejos above Platoro Reservoir and 12 miles of the South Fork, a tributary of the Conejos, be designated as a wild river. Both of these segments are inside the South San Juan Wilderness.

In addition, 13.2 miles of the main stem of the Conejos immediately below the reservoir are recommended as a recreational river. Conservationists are eager to see that designation occurs.

The proposed recreational segment of the river lies wholly below the reservoir. So even though there are some inflows from springs and tributaries below the dam, the segment is largely dependent for its future health on the operation of the reservoir. The details of that operation are spelled out in the legislation before you and they are critical. We believe that as introduced S. 1118 will not protect the nationally significant values of the river corridor, Mr. Chairman, and thus have been able to support it.

But I can report to you that we have been working closely with the Conservancy District and have agreed in principle to a package of modifications that will help protect those values and still allow the district the flexibility it needs to operate the facility for the benefit of its members.

Once details are ironed out—and we believe they will be—we anticipate that the district and conservation organizations will ask Senators Wirth and Armstrong to amend S. 1118 to incorporate the stronger environmental provisions and other elements of the agreement.

Briefly, Mr. Chairman, the provisions under discussion are these: An increase in winter flows to 7 cubic feet per second, compared to the 5 as originally proposed, and minimum summer flows of 40 cubic feet per second;

Maintenance in the reservoir of a larger permanent or conservation pool of 3,000 acre-feet compared to the originally proposed 1800 acre-feet;

The release of flushing flows in early spring or early summer to maintain the natural hydrologic regime of the river on a schedule and of a duration yet to be agreed upon;

The release of even flows in the fall to protect the brown trout spawn;

And direction to the appropriate agency of the United States to monitor and enforce compliance with the terms of the agreement and provision for the right of citizens to bring suit to force compliance.

The Conservancy District has offered, in return for conservationists' support of the amended legislation, and on the condition that a wild and scenic river water right would be consistent with the flows set out in our tentative agreement, to support the designation of the Conejos as part of the national wild and scenic rivers system.

The district's support would certainly help us achieve the eventual designation of the river. We are reasonably confident, Mr. Chairman, that the flows I have described to you are sufficient to protect the valuable cold water fishery. But we cannot know, without additional hydrologic data, whether those flows are sufficient to protect the outstanding wild and scenic values the Forest Service identified in its 1982 recommendation. We are seeking that information now.

Conejos County boasts some of Colorado's most outstanding natural beauty, and its people are among the Nation's poorest. Both deserve protection. The progress we have made with the district makes us hopeful we can find a way to serve them both.

We applaud the district for its willingness to work with us. We will work as quickly as possible, Mr. Chairman, to complete the agreement and look forward to supporting an amended S. 1118.

That completes my statement.

Senator **Bradley**. Thank you very much, Mr. Robertson.

Mr. McDonald.

Mr. **McDonald**. Mr. Robins will go first.

STATEMENT OF ROBERT E. ROBINS, JR., PRESIDENT, BOARD OF DIRECTORS, CONEJOS WATER CONSERVANCY DISTRICT, ACCOMPANIED BY FELIX GALLEGOS, VICE PRESIDENT

Mr. **Robins**. Mr. Chairman, members of the subcommittee:

My name is Robert Robins. I am President of the Board of Directors of the Conejos Water Conservancy District. I have with me Felix Gallegos, the Vice President of the district.

I have lived near Antonito, Colorado, and made my living for 28 years in the irrigated agricultural business. I appreciate the opportunity to appear before the subcommittee and to ask your favorable consideration of S. 1118, introduced by Senators Armstrong and Wirth.

Platoro Reservoir was built in 1951. Because of the administration of the Rio Grande Compact, it has essentially never been used. The Conejos Water Conservancy District, the sponsoring local agency with repayment obligation to the United States, seeks the transfer of operational responsibility of the reservoir to the district. We believe that an aggressive local water management policy, integrated with the use of the privately owned water rights of the local water users, offers the best opportunity to realize the benefits for which the project was originally constructed.

The Conejos Water Conservancy District is a small irrigation district, about 85,000 irrigatable acres, located in the poorest county in Colorado and one of the poorest counties in the country. With very few exceptions, we are small family farmers and ranchers living on our farms and ranches. We do not grow surplus crops.

Our original proposal for the legislation, with the encouragement of the Bureau of Reclamation, was for an actual purchase of the reservoir. Because of considerable policy concerns at a national level, the idea of actual transfer of title has been withdrawn and instead the legislation before you now calls for the transfer of operation and maintenance responsibility to the district and for the one-time payment in licu of future construction repayments.

This one-time payment greatly helps our overall cash flow, since we can use a State financing package to make the payment. The $500,000 lump sum price is based on the present worth of our repayment contract of $2.32 million over 40 years at 0 percent interest, taking into account that the Federal Government would be relieved of its share of O and M costs in the amount of about $29,000 per year.

This price was further reduced to $450,000 based on a 50 percent sharing of costs with the Bureau for maintaining in-stream flows.

The key to our operation will be the storage of a part of water that has been historically diverted by the ditches in a non-beneficial manner during May and June, allowing the use of some of that water in July and August when it is badly needed to finish crops.

In order to make it work, we will have to allow individual ditch companies to maintain their own account consisting of part of the water that they held off diverting. We will also try to store some of our entitlement from the Closed Basin project, making some water available for other users who might not have had the opportunity to store on their ditch water rights.

This manner of operating puts the responsibility for water conservation solely on the shoulders of those users who want to take advantage of the storage. We have had the opportunity this year to actually operate on this basis and the results are very encouraging.

There were some environmental matters raised, which we have addressed. We have agreed with the Forest Service on maintaining a permanent pool in the reservoir. We have agreed with the Bureau of Reclamation on the maintenance of a minimum stream flow.

Subsequently, we have reached a tentative agreement with environmental interests, which must be approved by their organizations and the Conejos Water Conservancy Board. This brings us to a point where most of the problems are worked out to the best of our information.

Mr. Chairman, we appreciate the opportunity to be here today and request the committee's favorable consideration of S. 1118 and to go forward as soon as possible. This bill is satisfactory to the Federal agency and is widely supported by local and State interests. It is a good bill, which will allow the restoration of a good but frustrated Federal project.

However, I must emphasize that the agreements with the environmental community have not totally been finalized.

Thank you, sir.

[The prepared statement of Mr. Robins follows:]

PREPARED STATEMENT OF ROBERT E. ROBINS JR., PRESIDENT, BOARD OF DIRECTORS, CONEJOS WATER CONSERVANCY DISTRICT

Mr. Chairman, members of the Subcommittee, my name is Robert E. Robins, Jr. and I am the President of the Board of Directors of the Conejos Water Conservancy District. I have lived near Antonito, Colorado all my life and I made my living for 28 years in irrigated agriculture. I appreciate the opportunity to appear before the Subcommittee and to ask your favorable consideration of S. 1118 introduced by Senators Armstrong and Wirth.

Platoro Reservoir was built in 1951. Because of the administration of the Rio Grande Compact, it has essentially never been used. The Conejos Water Conservancy District, the sponsoring local agency with repayment obligation to the United States, seeks the transfer of the reservoir to the District. We believe that an aggressive local water management policy, integrated with the use of the privately owned water rights of the local water users, offers the best opportunity to realize the benefits for which the project was originally built.

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THE REPAYMENT CONTRACT

Platoro was first authorized in 1940 as the Conejos River Unit of the San Luis Valley Irrigation Project. The repayment contract between the United States Bureau of Reclamation and the Conejos Water Conservancy District was executed in 1949 as a standard reclamation repayment contract. It provided basically that the construction cost allocated to irrigation, 60% of the total cost or $2.33 million, would be repaid over forty years at zero percent interest. The remaining 40% was allocated to flood control. The District was also committed to pay 60% of the annual operating and maintenance cost.

In 1958 the contract was amended to provide that the actual annual construction payment would be variable based on the amount of water available for use in storage. With some additional amendments this contract is still applicable. Payments under the contract were not to commence until the completion of a 5-year development period, after water became available for use. Because of the effect of the Rio Grande Compact, water has not become available for use and the contract remains executory. Virtually no payments have been made.

THE RIO GRANDE COMPACT AND WATER USE IN THE CONEJOS DISTRICT

The Rio Grande Compact was executed by the States of Texas, New Mexico and Colorado, with approval by Congress, in 1938. It divided the right to use water between the states by imposing on Colorado and New Mexico delivery requirements to the downstream state. That delivery requirement was based on a schedule in which the discharge would be a function of the amount of inflow, with greater percentage deliveries required for higher inflows. In recognition of natural departures from the relationship of inflows to outflows, the upstream state was allowed to accumulate a "debit" up to a specified maximum (100,000 AF for Colorado; 200,000 for New Mexico). The belief was that the existing water uses would not need to be curtailed.

The compact also dealt with the operation of future reservoirs that were anticipated to be built in Colorado and New Mexico, providing among other things that if the upstream state should go into arrears on its required delivery by more than the allowable amount, certain water in "post-compact reservoirs" must be held for the account of the downstream state. Further, no new water could be impounded in the post-compact reservoir as long as such debt remained. Platoro is such a post-compact reservoir. In 1952, the year when the gates of Platoro were first closed, Colorado went into debt by 150,000 acre-feet. It was an ironic coincidence; subsequent study showed the cause of the underdelivery to be an unfortunate combination of a basin-wide drouth with attendant increased depletions in the San Luis Valley. Colorado did not get out of debt until 1985 when, due to the hydrologic anomaly of a series of unprecedented wet years, Elephant Butte Reservoir in New Mexico filled and spilled. Under the terms of the compact, the debt was erased.

During the years between 1952 and 1985 Platoro was used for flood control purposes under operation by the Bureau of Reclamation by agreement with the Army Corps of Engineers. And it was used for recreation purposes and for fishing purposes under the general management of the United States Forest Service and the Colorado Division of Wildlife. On one occasion in 1968 and 1969, by special agreement with the downstream states, the Bureau was allowed to declare a small amount of water available for use. In each year, 6,000 acre-feet were sold on a special one-year water service contract to the water users. In the past few years we have had temporary water service contracts with the Bureau and a large amount of water has been sold and delivered to farmers with good results, really demonstration the potential of the project. 1987 and 1988 in particular demonstrated the potential of the reservoir, with several participating water users reporting that they had obtained a second crop of alfalfa for the first time.

The history of water use in the Conejos region has been a frustrating one. Sometime after the negotiation and signature of the 1938 compact, distrust and suspicion began to grow between the users of the Conejos and water users of the mainstem of the Rio Grande in Colorado. The compact had provided for separate delivery schedules for the Conejos and the Rio Grande, and questions about how they would be administered emerged. The questions simmered through the '50's and '60's, but the controversy erupted in full in 1968, when Texas and New Mexico sued Colorado over the accumulated compact debt which at that point had reached 900,000 acre-feet. Colorado stipulated to forego the further use of debt and to administer so as to force a delivery exactly equal to the schedule each year.

The resulting litigation over administrative rules and regulations governing compact compliance and governing well pumping in the San Luis Valley was long, bitter and expensive. Ten weeks of trial during 1979, all the preparation during the prior decade and the ensuing appeals left the Conejos District with massive debts and a bitter defeat. The compact would be administered based on two separate schedules, regardless of the relative seniority of the Conejos water rights and regardless of the tighter bind of the Conejos schedule. Conejos increased its mill levy and issued general obligation bonds to cover its debts. Meanwhile, Platoro Reservoir, with all its promise for water management sat unused.

THE PROPOSED TRANSACTION

Now Platoro is seen as the great hope for the Conejos region. The reality has sunk in that the severe Conejos compact schedule must be met. Aggressive water conservation and management will be necessary. Nevertheless, the risks of future compact indebtedness and its possible freeze on the use of the reservoir must be anticipated.

The District approached the Bureau about further amendments to the repayment contract to obtain the flexibility needed to pursue aggressive management and to shoulder the compact risk. The original 5-year development period was in dispute. Had it already occurred as some correspondence seemed to indicate? Or had it never been possible to occur since water had never been usable during the period? The Bureau's position was that reclamation law precluded another development period. Could the variable repayment obligation based on "water availability" be clarified to track actual water delivered for use on district lands as opposed to water simply in storage? If the compact froze its use, water in storage was no good for irrigation nor for the production of water sales revenues. Could water, or reservoir space, be "subleased" to other users to help create a stable revenue stream? The Bureau felt that such subleases must be limited to entities that complied with acreage limitations and other constraints of reclamation law. The District complained about the spiralling operations and maintenance costs. It felt it could much more efficiently operate the reservoir itself. The Bureau's suggestion was that Conejos simply buy Platoro.

Conejos responded by writing a general offer for purchase of the entire reservoir except for the flood control function. The offer was for $500,000. The Bureau countered that Conejos must take the entire reservoir including flood control (and therefore 100% of the O&M costs), but the price would remain at $500,000. That essential agreement was memorialized in an Agreement in Principle which has been executed by the Bureau and Conejos. That agreement was subject to congressional approval since it contemplatedboth amendment to the original authorizing legislation and Federal transfer of facilities.

Subsequently, policy discussions occurred concerning the advisability of actually transferring title to the Federal facilities as opposed to providing for assignment of all operation and maintenance control and for single payment in lieu of future construction payments. The policy question is a significant one nationally; other projects are being proposed for title transfer. Conejos determined that title transfer was not essential for it to achieve its water management objectives, and the proposal before Congress has been altered accordingly.

The $500,000 in lieu payment now proposed as part of an O&M transfer is equivalent to the lump-sum payment of the future obligations of the repayment contract, taking into account the Federal savings of flood control O&M costs. ($2.32 million over 40 years at zero percent interest less approximately $29,000/year for the Federal share of O&M, brought to present worth assuming a 5% real discount rate, is approximately $500,000.)

By subsequent agreement with the Bureau providing for cost sharing for instream flow maintenance, the cost has been further reduced to $450,000.

The effect of the transaction from the Federal perspective is to discount and assign to others a questionable loan. The risk of compact problems and task of implementing aggressive water management is passed to the water users. From Conejos' perspective the effect is the challenge of direct responsibility for the success of the project.

PROPOSED OPERATIONS

As originally envisioned by R.J. Tipton, a Colorado water engineer and compact negotiator, Platoro would re-regulate the water supply of the Conejos River and allow it to be fit to the timing of water needs of the users. He recognized that the prevailing irrigation uses were anything but efficient, and that the "wild-flooding" practice was driven by the unreliability of the river itself. If some amount of storage could be provided to hold back a portion of the runoff of May and June to provide a dependable source of supply in July or August, then a much greater degree of efficiency of water use could be obtained. Tipton felt that Platoro could essentially provide a full and regular supply sufficient for the entire Conejos irrigated acreage. Thus, the questions of whose water rights would effectively be used or whose rights would be affected, would all be mooted.

As it turns out, the project may not succeed in providing a full supply to all potential users, as a result of fundamental differences in hydrology from Tipton's expectations. Some of these changes may be due to additional depletions in the San Luis Valley; much of the change is due to the fact that the climate did not behave as predicted from the short period of record used to develop the compact. Not only would the project not extend all the way around, but it would benefit some users more than others. The current plan is to provide project storage benefits on a voluntary subscription basis. As actually practiced this current dry year on a pilot program basis, individual ditch companies accrued accounts of storage water in Platoro based on their voluntary reduction of diversions on their direct flow rights. The initial results are quite encouraging; thirteen different ditches participated to a total of 4000 acre-feet of water that will be vitally important later this summer.

To offset the effect of unpredictedly severe hydrology, the obligations of the Mexican Treaty and the tight bind of the compact delivery schedule, Congress authorized, and the Bureau of Reclamation is constructing, the Closed Basin Unit of the San Luis Valley Project. This project will pump shallow ground water to the Rio Grande, salvaging natural evaporative losses and greatly helping both the Rio Grande and the Conejos to meet their compact obligations, as well as enhance wildlife habitat. Approximately 40% of the Closed Basin Project benefits have been allocated to Conejos, and this will permit additional storage of water in Platoro, further extending the usable water supply.

SUPPORT FROM COLORADO STATE AND LOCAL AGENCIES

The transfer and implementation of Platoro Reservoir is widely supported in Colorado. It is seen as a key economic development issue in one this poor rural county. The state legislature overwhelmingly approved funding of the transfer through the Colorado Water Conservation Board Construction Fund. Passage of the legislation was led by key legislators from both parties. $400,000 would be loaned (this amount will now be reduced to $350,000) and $100,000 would be granted to Conejos. The Water Conservation Board has approved the specific financing package based on water revenues. The Governor has indicated his very strong support for Platoro in line with his strong economic development policies. The congressional delegation is strongly behind the sale. And of historical significance in light of the bitter controversies of prior years, the conveyance is strongly supported by neighboring water users on the Rio Grande.

ENVIRONMENTAL MATTERS

The transfer of facilities from the United States to the Conejos Water Conservancy District does not in itself change the operation of the project in any significant respect. The Bureau of Reclamation has concluded under its guidelines that formal environmental assessment is not required under NEPA.

Of course, a 1951 reservoir did not undergo current NEPA evaluation at the time of planning and construction. No environmental mitigation was required or provided; no instream flow water rights were acquired nor operating criteria imposed. Nevertheless agreements addressing certain environmental impacts of the existing project have now been made with the Bureau, with the United States Forest Service and with certain environmental organizations. These address maintenance of instream flow below the dam and a permanent recreation pool in the reservoir.

Presently the Colorado Water Conservation Board holds a state water court decree for instream flow below the dam. By stipulation with Conejos, that water right in the summer season protects flows in the amount of 40 cfs. In the wintertime the state's instream flow right for 1O cfs. is junior to storage in Platoro. Committing to maintain a base winter flow will substantially impact the storable yield of the project. The agreement with the Bureau committed the District to maintain a 5 cfs. minimum flow below the dam. The cost of the resultant reduction of project yield was estimated at $100,000; the Bureau and the District will share that cost equally by reducing the lump sum price to $450,000.

The agreement with the Forest Service commits the District to maintain a permanent recreation and wildlife pool and has agreed to control releases during the fall brown trout spawn and to ensure periodic channel flushing flows in the spring.

In an additional agreement with various national and local environmental interests, Conejos has agreed to increase the winter instream flow to 7.0 cfs and to increase the permanent pool 3000, provided not more than 600 acre-feet of that can be used to support winter instream flow releases. Conejos has also agreed to citizen suit enforcement of these various environmental protection provisions. This agreement is tentative pending approval of other environmental organizations.

This package of environmental provisions greatly enhances the environmental protection associated with this pre-NEPA project.

OTHER POLICY ISSUES

As indicated, policy issues associated with transfer of title of the Federal facilities, have now been obviated. Questions with the United States Forest Service regarding the transfer of the underlying land, its fair market value and avoiding future speculative uses of the land are all avoided. Issues about valuation of Federal facilities upon a transfer are likewise avoided. The existing contract will remain in effect except for the single payment in lieu of future construcfion payments and for the transfer of O&M functions. Contract provisions concerning reclamation law, such as acreage limits, remain in effect.

In discussions with environmental interests a major concern emerged relating to the possible future inclusion of segments of the Conejos River in the National Wild and Scenic River System, including the segment downstream from Platoro Reservoir. The river was studied by the Forest Service, resulting in recommendations for inclusion in 1982. While actual Wild and Scenic designation is outside the scope of the present legislative proposal, the Conejos District has agreed to support such designations in the future, including recreational designation in the Conejos below Platoro down to the South Fork, as long as the water rights requirements of such future proposal are consistent with the flow requirements provided in the currently proposed legislation. This agreement is also tentative pending acceptance by other interested environmental organizations.

Mr. Chairman, we request the Subcommittee's favorable consideration of S. 1118. The bill is satisfactory to the Federal agencies and is widely supported by local and state interests. It is a good bill which we believe will allow the restoration of a good, but frustrated Federal project.

AMENDMENT IN THE NATURE OF A SUBSTITUTE TO H.R. 1462 AND S. 1118

Strike all after the enacting clause and insert the following:

SECTION 1: FINDINGS AND DECLARATIONS.

The Congress finds and declares the following:

(1) Platoro Dam and Reservoir of the Platoro Unit of the Conejos Division of the San Luis Valley Project was built in 1951 and has not been usable because of the constraints imposed by the Rio Grande Compact of 1939 on the use of the Rio Grande River among the States of Colorado, New Mexico and Texas.

(2) The usefulness of Platoro Reservoir under future compact compliance depends upon the careful conservation and wise management of water, and requires the operation of the reservoir project in conjunction with the privately owned water rights of the local water users.

(3) It is in the best interest of the people of the United States to:

(A) transfer operation, maintenance and replacement responsibility for the Platoro Dam and Reservoir to the Conejos Water Conservancy District of the State of Colorado, which is the local water user district with repayment responsibility to the United States and the local representative of the water users with privately owned water rights;

(B) relieve the people of the United States from further financial risk or obligation in connection with the collection of construction charge repayments and annual operation and maintenance payments for the Platoro Dam and Reservoir, by providing for payment of a one-time fee to the United States in lieu of the scheduled annual payments and termination of any further repayment obligation to the United States pursuant to the existing repayment contract between the United States and the District (Contract No. Ilr-1529, as amended); and

(C) determine such one time fee, taking into account the determination by the District of all the operation and maintenance costs associated with the reservoir, including the existing Federal obligation for the operation and maintenance of the reservoir for flood control purposes, and taking account 50 percent sharing of the cost of maintaining a minimum stream flow as provided in section 2(d) of this Act.

SEC. 2. TRANSFER OF OPERATION AND MAINTENANCE RESPONSIBILITY OF PLATORO RESERVOIR

(a) In General.—The secretary of Interior is authorized and directed to undertake the following:

(1) Accept a one-time payment of $450,000 from the District in lieu of the repayment obligation of paragraphs 8(d) and 11 of the Repayment Contract between the United States and the District (No. 114-1529) as amended.

(2) Enter into an agreement for the transfer of all of the operations and maintenance functions of the Platoro Dam and Reservoir, including the operation and maintenance of the reservoir for flood control purposes, to the District. The agreement shall provide—

(A) that the District will have the exclusive responsibility for operations and the sole obligation for all of the maintenance of the reservoir in a satisfactory condition for the life of the reservoir subject to review of such maintenance by the Secretary to ensure compliance with reasonable operation, maintenance, and dam safety requirements as they apply to Platoro Dam and Reservoir under Federal and State law; and

(B) that the District shall have the exclusive use of all associated facilities, including outlet works, remote control equipment, spillway, and land and buildings in the Platoro townsite.

(b) Title.—Title to the Platoro Dam and Reservoir and all associated facilities shall remain with the United States, and authority to make recreational use of Platoro Dam and Reservoir shall be under the control and supervision of the United States Forest Service, Department of Agriculture.

(c) Amendments to Contract.—The Secretary is authorized to enter into such other amendments to such Contract No. Ilr-1529, as amended, necessary to facilitate the intended operations of the project by the District. All applicable provisions of the Federal reclamation laws shall remain in effect with respect to such contract.

(d) Conditions Imposed Upon the District.—The transfer of operation and maintenance responsibility under subsection (a) shall be subject to the following conditions:

(1)(A) The District will operate Platoro Dam and Reservoir in such a way as to provide—

(i) that releases or bypasses from the reservoir flush out the channel of the Conejos River periodically in the spring or early summer to maintain the hydrologic regime of the river; and

(ii) that any releases from the reservoir contribute to even flows in the river as far as possible from October 1 to December 1 so as to be sensitive to the brown trout spawn.

(B) The conditions contained in subparagraph (A) shall be subject to the operation of the Platoro Dam and Reservoir by the District for water supply uses (including storage and exchange of water rights owned by the District or its constituents), and interstate compact and flood control purposes, which shall be senior and paramount to the channel flushing and fishery objectives referred to in subparagraph (A).

(2) The District will provide and maintain a permanent pool in the Platoro Reservoir for fish, wildlife, and recreation purposes, in the amount of 3,000 acre-feet, including the initial filling of the pool and periodic replenishment of seepage and evaporation loss, provided, however, if necessary to maintain the winter instream flow provided in the foregoing subparagraph, the permanent pool may be allowed to be reduced to 2,400 AF.

(3) The District shall maintain releases of water from Platoro Reservoir of at least 7 cubic feet per second during the months of October through April. The District has previously agreed with the State of Colorado to subordinate its rights to those of the State to maintain instream flows of 40 cubic feet per second, or natural inflow if less, during the months of May through September.

(4) The conditions contained in this subsection (d) may be modified and enforced by any appropriate agency of the United States. In addition, any citizen may bring suit to enforce the conditions contained in this subsection (d), provided specific enforcement shall be the exclusive remedy and no money damages may be recovered for any past failure to comply.

(e) FLOOD CONTROL MANAGEMENT.—The Secretary of the Army, acting through the Chief of Engineers, shall retain authority over Platoro Dam and Reservoir for flood control purposes and shall direct the District in the operation of the dam for such purposes. To the extent possible, management by the Secretary of the Army under this subsection shall be consistent with the water supply use of the reservoir and with the administration of the Rio Grande Compact of 1939 by the Colorado State Engineer. The Secretary of the Army shall enter into a Letter of Understanding with the District and the United States Bureau of Reclamation prior to transfer which details the responsibility of each party and specifies the flood control criteria for the reservoir.

(f) COMPLIANCE WITH COMPACT AND OTHER LAWS.—The transfer under Section 2(b) shall be subject to the District's compliance with the Rio Grande Compact of 1939 and all other applicable laws and regulations, whether of the State of Colorado or of the United States.

SEC. 3. DEFINITIONS.

As used in this Act—

(1) the term "District" means the Conejos Water Conservancy District of the State of Colorado;

(2) the term "Federal reclamation laws" means the Act of June 17, 1902 (32 Stat. 388), and Acts supplementary thereto and amendatory thereof;

(3) the term "Platoro Reservoir" means the Platoro Dam and Reservoir of the Platoro Unit of the Conejos Division of the San Luis Valley Project; and

(4) the term "Secretary" means the Secretary of the Interior.

PLATORO BACKGROUND PAPER

INTRODUCTION

Platoro Reservoir was built in 1951. Because of the administration of the Rio Grande Compact it has essentially never been used. The Conejos Water Conservancy District, the sponsoring local agency with repayment obligation to the United States, seeks the transfer of the reservoir to the District. It believes that an aggressive local water management policy, integrated with the use of the privately owned water rights of the local water users, offers the best opportunity to realize the benefits for which the project was originally built.

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1949 as a standard reclamation repayment contract. It provided basically that the construction cost allocated to irrigation, 60% of the total cost or $2.33 million, would be repaid over forty years at zero percent interest. The remaining 40% was allocated to flood control. The District was also committed to pay 60% of the annual operating and maintenance cost.

In 1958 the contract was amended to provide that the actual annual construction payment would be variable based on the amount of water available for use in storage. With some additional amendments this contract is still applicable. Payments under the contract were not to commence until the completion of a 5-year development period, after water became available for use. Because of the effect of the Rio Grande Compact, water has not become available for use and the contract remains executory. Virtually no payments have been made.

THE RIO GRANDE COMPACT AND WATER USE IN THE CONEJOS DISTRICT

The Rio Grande Compact was executed by the States of Texas, New Mexico and Colorado, with approval by Congress, in 1938. It divided the right to use water between the states by imposing on Colorado and New Mexico delivery requirements to the downstream state. That delivery requirement was based on a schedule in which the discharge would be a function of the amount of inflow, with greater percentage deliveries required for higher inflows. In recognition of natural departures from the relationship of inflows to outflows, the upstream state was allowed to accumulate a "debit" up to a specified maximum (100,000 AF for Colorado; 200,000 for New Mexico). The belief was that the existing water uses would not need to be curtailed.

The compact also dealt with the operation of future reservoirs that were anticipated to be built in Colorado and New Mexico, providing among other things that if the upstream state should go into arrears on its required delivery by more than the allowable amount, certain water in "post-compact reservoirs" must be held for the account of the downstream state. Further, no new water could be impounded in the postcompact reservoir as long as such debt remained. Platoro is such a post-compact reservoir. In 1952, the year when the gates of Platoro were first closed, Colorado went into debt by 150,000 acre-feet. It was an ironic coincidence; subsequent study showed the cause of the underdelivery to be an unfortunate combination of a basin-wide drouth with attendant increased depletions in the San Luis Valley. Colorado did not get out of debt until 1985 when, due to the hydrologic anomaly of a series of unprecedented wet years, Elephant Butte Reservoir in New Mexico filled and spilled. Under the terms of the compact, the debt was erased.

During the years between 1952 and 1985 Platoro was used for flood control purposes under operation by the Bureau of Reclamation by agreement with the Army Corps of Engineers. And it was used for recreation purposes and for fishing purposes under the general management of the United States Forest Service and the Colorado Division of Wildlife. On one occasion in 1968 and 1969, by special agreement with the downstream states, the Bureau was allowed to declare a small amount of water available for use. In each year, 6000 acre-feet were sold on a special one-year water service contract to the water users. Again in 1986, 1987 and 1988 small amounts of water were sold to water users on water service agreements. 1987 and 1988 in particular demonstrated the potential of the reservoir, with several participating water users reporting that they had obtained a second crop of alfalfa for the first time.

The history of water use in the Conejos region has been a frustrating one. Sometime after the negotiation and signature of the 1938 compact, distrust and suspicion began to grow between the users of the Conejos and water users of the mainstem of the Rio Grande in Colorado. The compact had provided for separate delivery schedules for the Conejos and the Rio Grande, and questions about how they would be administered emerged. The questions simmered through the '50's and '60's, but the controversy erupted in full in 1968, when Texas and New Mexico sued Colorado over the accumulated compact debt which at that point had reached 900,000 acre-feet. Colorado stipulated to forego the further use of debt and to administer so as to force a delivery exactly equal to the schedule each year.

The resulting litigation over administrative rules and regulations governing compact compliance and governing well pumping in the San Luis Valley was long, bitter and expensive. Ten weeks of trial during 1979, all the preparation during the prior decade and the ensuing appeals left the Conejos District with massive debts and a bitter defeat. The compact would be administered based on two separate schedules, regardless of the relative seniority of the Conejos water rights and regardless of the tighter bind of the Conejos schedule. Conejos increased its mill levy and issued general obligation bonds to cover its debts. Meanwhile, Platoro Reservoir, with all its promise for water management sat unused.

THE PROPOSED TRANSACTION

Now Platoro is seen as the great hope for the Conejos region. The reality has sunk in that the severe Conejos compact schedule must be met. Aggressive water conservation and management will be necessary. Nevertheless, the risks of future compact indebtedness and its possible freeze on the use of the reservoir must be anticipated.

The District approached the Bureau about further amendments to the repayment contract to obtain the flexibility needed to pursue aggressive management and to shoulder the compact risk. The original 5-year development period was in dispute. Had it already occurred as some correspondence seemed to indicate? Or had it never been possible to occur since water had never been usable during the period? The Bureau's position was that reclamation law precluded another development period. Could the variable repayment obligation based on "water availability" be clarified to track actual water delivered for use on district lands as opposed to water simply in storage? If the compact froze its use, water in storage was no good for irrigation nor for the production of water sales revenues. Could water, or reservoir space, be "subleased" to other users to help create a stable revenue stream? The Bureau felt that such subleases must be limited to entities that complied with acreage limitations and other constraints of reclamation law. The District complained about the spiralling operations and maintenance costs. It felt it could much more efficiently operate the reservoir itself. The Bureau's suggestion was that Conejos simply buy Platoro.

Conejos responded by writing a general offer for purchase of the entire reservoir except for the flood control function. The offer was for $500,000. The Bureau countered that Conejos must take the entire reservoir including flood control (and therefore 100% of the O&M costs), but the price would remain at $500,000. That essential agreement was memorialized in an Agreement in Principle which has been executed by the Bureau and Conejos. That agreement was subject to congressional approval since it contemplated both amendment to the original authorizing legislation and Federal transfer of facilities.

Subsequently, policy discussions occurred concerning the advisability of actually transferring title to the Federal facilities as opposed to providing for assignment of all operation and maintenance control and for single payment in lieu of future construction payments. The policy question is a significant one nationally; other projects are being proposed for title transfer. Conejos determined that title transfer was not essential for it to achieve its water management objectives, and the proposal before Congress has been altered accordingly.

The $500,000 in lieu payment now proposed as part of an O&M transfer is equivalent to the lump-sum payment of the future obligations of the repayment contract, taking into account the Federal savings of flood control O&M costs. ($2.32 million over 40 years at zero percent interest less approximately $29,000/year for the Federal share of O&M, brought to present worth assuming a 5% real discount rate, is approximately $500,000.)

By subsequent agreement with the Bureau providing for cost sharing for instream flow maintenance, the cost has been further reduced to $450,000.

The effect of the transaction from the Federal perspective is to discount and assign to others a questionable loan. The risk of compact problems and task of implementing aggressive water management is passed to the water users. From Conejos' perspective the effect is the challenge of direct responsibility for the success of the project.

PROPOSED OPERATIONS

As originally envisioned by R.J. Tipton, a Colorado water engineer and compact negotiator, Platoro would reregulate the water supply of the Conejos River and allow it to be fit to the timing of water needs of the users. He recognized that the prevailing irrigation uses were anything but efficient, and that the "wild-flooding" practice was driven by the unreliability of the river itself. If some amount of storage could be provided to hold back a portion of the runoff of May and June to provide a dependable source of supply in July or August, then a much greater degree of efficiency of water use could be obtained. Tipton felt that Platoro could essentially provide a full and regular supply sufficient for the entire Conejos irrigated acreage. Thus, the questions of whose water rights would effectively be used or whose rights would be affected, would all be mooted.

As it turns out, the project may not succeed in providing a full supply to all potential users, as a result of fundamental differences in hydrology from Tipton's expectations. Some of these changes may be due to additional depletions in the San Luis Valley; much of the change is due to the fact that the climate did not behave as predicted from the short period of record used to develop the compact. Not only would the project not extend all the way around, but it would benefit some users more than others. The current plan is to provide project storage benefits on a voluntary subscription basis. As actually practiced this current dry year on a pilot program basis, individual ditch companies accrued accounts of storage water in Platoro based on their voluntary reduction of diversions on their direct flow rights. The initial results are quite encouraging; thirteen different ditches participated to a total of 4000 acre-feet of water that will be vitally important later this summer.

To offset the effect of unpredictedly severe hydrology, the obligations of the Mexican Treaty and the tight bind of the compact delivery schedule, Congress authorized, and the Bureau of Reclamation is constructing, the Closed Basin Unit of the San Luis Valley Project. This project will pump shallow groundwater to the Rio Grande, salvaging natural evaporative losses and greatly helping both the Rio Grande and the Conejos to meet their compact obligations, as well as enhance wildlife habitat. Approximately 40% of the Closed Basin Project benefits have been allocated to Conejos, and this will permit additional storage of water in Platoro, further extending the usable water supply.

SUPPORT FROM COLORADO STATE AND LOCAL AGENCIES

The transfer and implementation of Platoro Reservoir is widely supported in Colorado. It is seen as a key economic development issue in one of the poorest rural counties in the state and, for that matter, the country. The state legislature overwhelmingly approved funding of the purchase through the Colorado Water Conservation Board Construction Fund. Passage of the legislation was led by key legislators from both parties. $400,000 would be loaned (this amount will now be reduced to $350,000) and $100,000 would be granted to Conejos. The Water Conservation Board has approved the specific financing package based on water revenues. The Governor has indicated his very strong support for Platoro in line with his strong economic development policies. The congressional delegation is strongly behind the sale. And of historical significance in light of the bitter controversies of prior years, the conveyance is strongly supported by neighboring water users on the Rio Grande.

ENVIRONMENTAL MATTERS

The transfer of facilities from the United States to the Conejos Water Conservancy District does not in itself change the operation of the project in any significant respect. The Bureau of Reclamation has concluded under its guidelines that formal environmental assessment is not required under NEPA.

Of course, a 1951 reservoir did not undergo current NEPA evaluation at the time of planning and construction. No environmental mitigation was required or provided; no instream flow water rights were acquired nor operating criteria imposed. Nevertheless agreements addressing certain environmental impacts of the existing project have now been made with the Bureau, with the United States Forest Service and with certain environmental organizations. These address maintenance of instream flow below the dam and a permanent recreation pool in the reservoir.

Presently the Colorado Water Conservation Board holds a state water court decree for instream flow below the dam. By stipulation with Conejos, that water right in the summer season protects flows in the amount of 40 cfs. In the wintertime the state's instream flow right for 10 cfs. is junior to storage in Platoro. Committing to maintain a base winter flow will substantially impact the storable yield of the project. The agreement with the Bureau committed the District to maintain a 5 cfs. minimum flow below the dam. The cost of the resultant reduction of project yield was estimated at $100,000; the Bureau and the District will share that cost equally by reducing the lump sum price to $450,000.

The agreement with the Forest Service commits the District to maintain a permanent recreation and wildlife pool and has agreed to control releases during the fall brown trout spawn and to ensure periodic channel flushing flows in the spring.

In an additional agreement with various national and local environmental interests, Conejos has agreed to increase the winter instream flow to 7.0 cfs and to increase the permanent pool 3000, provided not more than 600 acre-feet of that can be used to support winter instream flow releases. Conejos has also agreed to citizen suit enforcement of these various environmental protection provisions. This agreement is tentative pending approval of other environmental organizations.

This package of environmental provisions greatly enhances the environmental protection associated with this pre-NEPA project.

OTHER POLICY ISSUES

As indicated, policy issues associated with transfer of title of the Federal facilities, have now been obviated. Questions with the United States Forest Service regarding the transfer of the underlying land, its fair market value and avoiding future speculative uses of the land are all avoided. Issues about valuation of Federal facilities upon a transfer are likewise avoided. The existing contract will remain in effect except for the single payment in lieu of future construction payments and for the transfer of O&M functions. Contract provisions concerning reclamation law, such as acreage limits, remain in effect.

In discussions with environmental interests a major concern emerged relating to the possible future inclusion of segments of the Conejos River in the National Wild and Scenic River System, including the segment downstream from Platoro Reservoir. The river was studied by the Forest Service, resulting in recommendations for inclusion in 1982. While actual Wild and Scenic designation is outside the scope of the present legislative proposal, the Conejos District has agreed to support such designations in the future, including recreational designation in the Conejos below Platoro down to the South Fork, as long as the water rights requirements of such future proposal are consistent with the flow requirements provided in the currently proposed legislation. This agreement is also tentative pending acceptance by other interested environmental organizations.

Senator BRADLEY. Thank you very much, Mr. Robins.

Mr. McDonald.

STATEMENT OF J. WILLIAM McDONALD, DIRECTOR, COLORADO WATER CONSERVATION BOARD

Mr. McDONALD. Senator, my name is Bill McDonald. I am Director of the Colorado Water Conservation Board. I am testifying today on behalf of the board.

In the interest of time, I would simply like to make one point to you. The bill as introduced envisioned one means to achieve a solution to the problems which the previous witnesses spoke to. That was the actual transfer of title from the United States to the Conejos Water Conservancy District.

The district has proposed an alternative to you today, that being a one-time payment in lieu of future repayments and the assignment of operation and maintenance responsibility to the Conejos district. Under this alternative, title would remain in the United States and reclamation law would continue to apply.

The district's proposal has the State's support, that is that the end of flexibility in operation and improved efficiency of use can be achieved as well by that means as by the means contemplated in the bill as introduced, and we certainly are prepared to support it.

With that, my written statement says it all.

[The prepared statement of Mr. McDonald follows:]

PREPARED STATEMENT OF J. WILLIAM McDONALD, DIRECTOR, COLORADO WATER CONSERVATION BOARD

The Colorado Water Conservation Board (Board) is the state agency charged with the development and conservation of the state's water resources. Accordingly, the Board has worked closely with the Bureau of Reclamation over the years to further water resources development in the state. This has included support for the Platoro Reservoir, a unit of the San Luis Valley Project.

Platoro Reservoir, which was completed in 1951, is not likely to ever serve its intended purpose—to work as originally conceived and presently operated. With the exception of temporary operations in the last couple of years. the reservoir has never been allowed to operate because of the combined effects of unexpected hydrology and the Rio Grande Compact, an interstate water compact between the states of Colorado, New Mexico. and Texas.

S. 1118 has been introduced to solve this problem—to find a means to make the Platoro Reservoir project workable and viable. The written statement of the Conejos Water Conservancy District (district) details the difficulties which have been encountered over the years and they will not be recounted here.

If solutions to these problems are not found, then benefits to local water users will be substantially reduced. Furthermore, repayment of the Federal investment will, at best, be problematic because the risks of mis-estimated hydrology and the limitations on the use of the reservoir imposed by the constraints of the Rio Grande Compact will fall largely on the United States.

The bill as introduced envisioned one means to achieve a solution. That is the actual transfer of title from the United States to the Conejos Water Conservancy District. However, the question of transfer of title is one which has policy implications nationally. As the District has indicated, and the Board concurs, an alternative approach is now offered—a one-time payment in lieu of future repayments, and the assignment of operation and maintenance responsibility to the Conejos District. Under this alternative, title will remain in the United States and Reclamation law will continue to apply.

The state has a substantial interest in resolving the problems which this project confronts for a number of reasons. First, it will assist with the economic development of the badly depressed areas which it serves through the stabilization of water supplies and increased crop yields of non-surplus crops. Indeed, the Platoro Reservoir project is one of the few economic development opportunities which we have in the San Luis Valley of Colorado. Second, the project will improve the efficiency of water use by local irrigators and will assist in utilizing the yield of the Closed Basin Project, another unit of the San Luis Valley Project. Third, the project will yield recreational benefits, including the dedication of a portion of the reservoir's storage capacity to a permanent pool.

Finally, instream flows in the Conejos River below the dam will be sustained. The Board holds an instream flow water right for 40 cubic feet per second (c.f.s.) in the summer months. The district has subordinated its senior reservoir storage right to the Board's instream flow right, thereby guaranteeing a flow of 40 c.f.s. or the natural inflow to the reservoir, whichever is less.

For the winter months, the Board holds an instream flow right for 10 c.f.s. or the natural flow, whichever is less. Quite frequently, natural flows are less than 10 c.f.s. The district's senior storage decree has not been subordinated to the Board's winter right. Therefore, the district can reduce outflows from the reservoir below 10 c.f.s. in the winter.

S. 1118 as introduced sought to strike a balance of interests by providing for a 5 c.f.s. winter minimum flow. The bill as introduced would require that this minimum flow be met at all times, thus requiring a release of stored water if natural inflows to the reservoir were less than 5 c.f.s. This is a significant improvement over current natural conditions and would constitute, in the Board's judgment, a reasonable instream flow given the naturally low flow of the winter months.

In recent negotiations with environmental interests, the district has indicated its willingness to accept winter flows of 7.0 c.f.s.—a very good deal indeed for the environment. The Board, too, will agree to this arrangement.

The Colorado General Assembly authorized the Board in 1987 to provide money to the district for the payment contemplated by S. 1118. The Board and the district have already reached agreement in principle on the necessary contractual documents. The state will assume the risk of annual variability in water supply and, therefore, annual variability in repayment. Thus, the United States will be relieved of the risk which it currently bears in this regard.

The state is so fully committed to pursuing the solution of the Platoro Reservoir problem that a portion of the monies which the General Assembly authorized will be given to the district in the form of a grant. The balance being a loan. The grant will be made in recognition of the fact that the district will permit a portion of the reservoir's storage space to be utilized by the Colorado State Engineer for compact administration purposes.

In conclusion, the Board supports S. 1118 with the amendments now proposed to resolve the title transfer issue and environmental concerns. We urge the committee's expeditious consideration of this legislation.

Senator **BRADLEY**. Mr. Underwood.

Mr. **UNDERWOOD**. Yes, Mr. Chairman. I would like to request—I think you had indicated all the written statements would be made a part of the record, but I would like to make sure.

Senator **Bradley**. It will be made part of the record.

Mr. **Underwood**. Let me just go back just a little background for you in terms of the project. There was a repayment contract entered in 1949. However, the district really, other than 1958 and until 1986, never got the use of the water, and that was because the Rio Grande Compact prohibited the release of storage water in Platoro Reservoir from its completion in 1953 until Elephant Butte filled in 1985.

Consequently, the only time that they really received any water has been in most recent years and those have been under temporary contracts.

The district is proposing to make a lump sum payment of $450,000, which represents the present worth of the annual payment of the repayment obligation. In addition to that, they will assume the operation and maintenance costs for flood control and they have agreed to maintain an 1,800 acre-foot permanent pool and 1,200 acre-foot of storage for in-stream flows.

The Bureau of Reclamation supports this bill.

[The prepared statement of Mr. Underwood on S. 1118 follows:]

Prepared Statement of Dennis B. Underwood, Commissioner, Bureau of Reclamation, Department of the Interior, on S. 1118

Mr. Chairman, am pleased to be here to present testimony on S. 1118, to provide for the transfer of the Platoro Reservoir to the Conejos Water Conservancy District and for the protection of fish habitat in the Conejos River.

Reclamation supports early repayment and transfer of project facilities when it can be demonstrated there are mutual benefits to both the contracting entities and to the United States. We believe this to be the case with respect to S. 1118, to authorize the transfer of Platoro Reservoir.

The Bureau of Reclamation supports enactment of S. 1118. S. 1118 involves the Conejos Unit of the San Luis Valley Project, located in South Central Colorado, and Platoro Reservoir, the major facility within that unit. This measure would allow the secretary to accept $450,000 from the Conejos Water Conservancy District as payment in full for the outstanding obligation owed to the United States under the terms of their repayment contract with the Bureau of Reclamation. The current repayment contract obligation is about $2,300,000, but repayment is contingent upon the availability of marketable water.

It would and also address environmental concerns of instream flows on the Conejos River as well as establish a minimum pool for fish and wildlife and recreation in Platoro Reservoir. This transfer does not include the authority for management of Platoro Dam for flood control purposes.

The Conejos Water Conservancy District entered into a contract with the United States for repayment of project construction costs for Platoro Dam and Reservoir on March 31, 1949. As amended and supplemental that contract provides for repayment under a variable repayment formula based upon the quantity of water available for use by the District in a given year. The contract provides for the District to pay the operation, maintenance, and replacement (OM&R) costs allocated to irrigation.

However, since provisions of the Rio Grande compact prohibited the release of storage water in Platoro Reservoir from its completion in 1953 until Elephant Butte filled in 1985, and since the District had paid OM&R charges for 14 years without receiving any water except In 1958, Reclamation granted administrative relief from the OM&R charges. Since 1966, the OM&R charges have been covered by appropriated OM&R funds as flood control purposes since there was no water to meet the irrigation purpose requirements. Pursuant to the repayment contract, no payment is due on capital costs if no water is available for use by the Conservancy District.

Water was available for use by the District in 1986, but, since the District lands had essentially reverted to dry land farming due to the extended period during which irrigation water was not available, the District could not immediately generate much demand for water. However, even under these conditions, on August 15, 1986, a temporary water sales contract was executed between the United States and the District for up to 10,000 acre-feet at $2.25 per acre-foot of water. This action relieved the District of the burden of unexpectedly coming under the full impact of the OM&R and repayment obligations without the benefit of water deliveries in previous years to generate revenues.

To obtain relief from meeting its contractual obligation for the 1987 irrigation season, the District requested—and was granted—a second water sales contract. The District then requested and was granted a third temporary water sales contract for the 1988 irrigation season to allow the lump-sum payout arrangement to proceed instead of enforcing the provisions of the existing repayment contract, which would require the District to pay OM&R costs and a water charge.

The water service contract required the District to pay the allocated OM&R costs to irrigation estimated to be $43,800 in three payments before July 15, 1988. It was stated in the contract that after the 1988 irrigation season provisions of the repayment contract would remain in force and effect. The District requested they pay only the OM&R costs allocated to irrigation for the 1989 and 1990 irrigation season on a schedule similar to the one established in the 1988 temporary water service contract.

The District was allowed to pay the OM&R costs on a schedule different than the one established by the repayment contract because the District receives payment from the water users just prior to delivery of the water during the irrigation season.

It was agreed through discussions with the District, the Albuquerque Projects office, and the Upper Colorado Regional Office that, because of the proposed legislation to transfer the Platoro Reservoir to the District and allow a lump-sum payment of $450,000 by the District of the repayment obligation, annual payments on the repayment obligation would be held in abeyance.

Mr. Chairman, with the resumption of storage in the Platoro Reservoir, the District petitioned the United States to accept $500,000 as a lump-sum payment of the District's $2.3 million repayment obligation, and to have the United States transfer title to the dam and reservoir to the District. The $500,000 includes a credit to District for assuming the O&M costs for flood control. Reclamation entered into an "Agreement in Principle" with the District on March 21, 1988, to accept the $500,000 lump-sum payment as consideration for transfer of title to project facilities, pending congressional authorization. Later, the District agreed to maintain certain minimum flow regimen in return for reduction of the lump-sum payment to $450,000. To satisfy concerns of the U.S. Forest Service, the Colorado Division of Wildlife, and other environmental groups, the District has also agreed to maintain 1,800 acre-feet in a permanent minimum pool, and commit an additional 1,200 acre-feet of storage to guarantee instream flows.

During hearings in September of 1989 on the House companion bill, H.R. 1482, concern was voiced with respect to title transfer and related environmental compliance and liability issues. The District is no longer seeking title, but is still seeking authorization for the lump-sum payment of $450,000 of the repayment obligation and transfer of O&M responsibilities.

Reclamation supports the lump-sum payment of $450,000 for the repayment obligation, and the transfer of the dam and reservoir to the District.

I would be pleased to answer any questions you may have.

Senator BRADLEY. Thank you very much, Mr. Underwood.

Mr. Robins or Mr. McDonald, how has the Bureau's presence at Platoro kept the district from pursuing changes in water management or water conservation or efficiency?

Mr. ROBINS. The district's major problem is the repayment contracts, which the district under its present structure cannot meet its obligations under that contract.

Senator BRADLEY. So that the Bureau does not have any effect on management or conservation or efficiency?

Mr. ROBINS. The Bureau since we have been using the reservoir in the last 4 years has been very cooperative and lenient in their administration of the Compact to work with us or the administration of the reservoir to work with us.

Senator BRADLEY. If you need some breathing space on repayment, why do you not just ask for that?

Mr. ROBINS. We have, sir, and we were not—this started about 5 years ago and we have not been able to satisfactorily come to terms with the Bureau of Reclamation. It was with their suggestion that we pursued the idea of purchasing the reservoir.

Senator **Bradley**. So the Bureau had that idea?

Mr. **Robins**. The Bureau, yes, sir.

Senator **Bradley**. And you agree with the way you reached the $450,000 sales price?

Mr. **Robins**. Yes, sir, I think so.

Senator **Bradley**. Let me ask you, Mr. Underwood. Does the Bureau have any kind of comprehensive policy on pricing facilities that somebody might want to buy?

Mr. **Underwood**. No, we do not. If we believe that it is mutually beneficial, then that would allow for negotiations to occur in terms of price.

We have looked at price and other things involved in title transfers. We have looked at all the aspects that are involved, not just price. When you are looking at liabilities, et cetera; there are a number of other items.

Senator **Bradley**. But do you not think you need a comprehensive policy?

Mr. **Underwood**. In terms of price?

Senator **Bradley**. Yes, for pricing.

Mr. **Underwood**. That is part of it as I said. We have undertaken a document that looks at all aspects of the title transfers. We have not finalized it. That has now gone out to the field for review and has not come back to me yet. That may end up very well leading to a final position on title transfers.

Senator **Bradley**. I mean for example, when you say, fine, we will take $450,000 for this, is it not logical and likely for OMB to ask "Why $450,000?" and "What is the policy?"

Mr. **Underwood**. Sure. Mr. Calhoun is going to make a comment.

Mr. **Calhoun**. Mr. Chairman, as a minimum I think the Bureau of Reclamation would be looking for the equivalent present worth of the stream of payments. Now, when you take a stream of payments such as the Conejos district would provide over a 40-year period to repay Platoro at zero percent interest, those payments out in the future years are not worth nearly as much if you compress that to the present worth.

Senator **Bradley**. I am not, for the moment, disputing this particular price, but I am well aware that there are other projects and other circumstances where we will face this question of price and asset transfer. It seems to me that you ought to build on the work you are doing now and develop a comprehensive approach on pricing.

Mr. **Underwood**. Mr. Chairman, I think we are leaning that way. Like I said, I think we have developed, are developing this draft document.

Senator **Bradley**. You suggested this to Mr. Robins, this approach. Why do you think this route is better than Congress just giving them some relief on repayment?

Mr. **Underwood**. I think when you take a look at what Mr. Calhoun was just mentioning you are still not looking at, if you get immediate relief, how it is going to play out in the long run. Are you going to be back into a problem here?

We believe that this is in the best interests of the Government.

Senator **Bradley**. So you see yourself cutting your losses here.

Mr. **Robins**. Mr. Chairman, may I make a statement?

Senator **Bradley**. Yes.

Mr. **Robins**. This is a 41 year old project, which the Government has basically not received anything back on, and we have not received much out of it, either.

Senator **Bradley**. A real success story.

Mr. **Robins**. It is a very frustrating project, it really is.

Mr. **Gallegos**. Let me say a word. I am Felix Gallegos, and I just want to express a thought or two on how it would help us. Since I do not know when, since water got tight, nobody has been able to raise a garden up there and there is a lot of land up there. With this project, if we store our water up there, which we have a lot of ways of doing it, we can do that.

People there survived the hard times with family gardens years ago. World War II, we provided trainloads of commodities. And today, if it ever came to that, you people would probably have to feed us, and we sure do not like that. We would like to help feed the Nation.

And by this water, we used it 3 years and this year we actually stored some of our own right waters up there on a temporary basis or a try-out, and it really works. I think it has been sitting there for some 40 years. If that had been done 20, 40 years ago, I think it would have helped us all along. Instead of being the poorest, we would probably be way up there.

Senator **Bradley**. So you think you can make a go of it?

Mr. **Gallegos**. We can make it go.

Senator **Bradley**. Okay. Well, I am glad you stayed to testify, despite your plane schedule.

The Senator from Colorado.

STATEMENT OF HON. TIMOTHY E. WIRTH, U.S. SENATOR FROM COLORADO

Senator **Wirth**. Mr. Chairman, I want to thank you very much for moving up these witnesses and for your questions and help on the Platoro bill. We have had this group working together for a long period of time to hammer this out, and your staff has been very helpful on the issues that they have raised.

I think overall we have done a good job on the piece of legislation. I hope that the environmental issues down the line will be worked out in terms of wild and scenic designation, and I think that that has every possibility of happening as well.

So I thank you very much. I think we are serving both the agricultural interests that Mr. Gallegos is talking about and the environmental interests that Todd Robertson and others have advocated here.

Conejos is a beautiful area and we really appreciate your help. Thank you very much.

Mr. Underwood, thank you.

Senator **Bradley**. Mr. Underwood, your support of the bill is for the bill as it is drafted or for the bill with the changes that Mr. Robertson mentioned?

Mr. Underwood. Even with the changes, we do not have any objections.

Senator Bradley. Okay.

Well, thank you all very much for staying and I wish you the very best of luck getting to the airport. It is only rush hour.

If we could return to the previous panel on Island Park. I just have one question. Actually, I would ask—I do not need to ask all of you the questions, but I would encourage any of you who would like to answer the questions to do so.

I would direct it at Mr. Herbst, and that relates to the central contention, which is that, because of actions under ECPA and other delays, they were unable to meet the deadline to get the tax credit and therefore out of good faith we owe $1 million to them. Now, let me ask you, Mr. Herbst.

Mr. Herbst. Mr. Chairman, I believe that Congress, with public input, changes the rules from time to time and affects individuals and businesses and corporations in their planning all the time. Just as a personal individual, you have in recent years taken away my IRA's, you have changed the Federal retirement.

Senator Bradley. We reduced your IRA's. We did not take them away.

Mr. Herbst. You have changed my ability to depreciate my rental property.

Senator Bradley. Right.

Mr. Herbst. So I have not come back to you for $1 million yet.

Senator Bradley. I have not asked you that question, however. What I wanted to ask you is, Senator McClure's very real concern is that because of action that he took as it related to ECPA additional burdens were put on the district.

Mr. Herbst. I understand that.

Senator Bradley. And those additional burdens caused them to lose out. And my real question is, were these really additional burdens?

Even under the Federal Power Act wouldn't FERC have insisted that before you were able to build the hydroelectric project on a world class trout stream that the project would not create—and these are the words from the bill—"significant and permanent alteration of streamflow, habitat, water temperature, and quality" anyway?

Do you not think that, whether there was an ECPA or not, there would have been these requirements?

Mr. Herbst. Yes.

Senator Bradley. You do?

Mr. Herbst. I think they would have. I think they would have had to make as strong an environmental requirement as possible on that stream or any project that affects the environment. And to adhere to those requirements is a cost of doing business.

Senator Bradley. Mr. Mower, I know that you probably have a different point of view, so why do you not put your point of view on the record.

Mr. Mower. Thank you. I agree with much of what Mr. Herbst said. I suffered some of the same considerations that he suffered, and in every instance I have accepted them, as most citizens do, and paid my taxes and gone along.

However, there is a difference between having a benefit taken away and losing some advantage and having an additional burden placed on you. And you mentioned or asked if there were not quantity and quality issues that normally would have been placed on the project by FERC, and the answer is absolutely.

But there is a difference in terms of the standard that was applied to this project because of the ECPA legislation, and that was no change, period. There are acceptable levels of DO oxygenation, nitrogen supersaturation, et cetera, that are environmentally acceptable, and this project meets a significantly higher standard, is required to meet a significantly higher standard.

If I might read from ECPA, it says: "Except that, in addition to the requirements of that act"—this is ECPA—"the Commission may issue such license only if the Commission determines that significant and permanent alteration of streamflow, habitat, water temperature, and quality will not occur as a result of this project."

So these are the additional burdens that were placed on the project. As I mentioned before, Bonneville Pacific has constructed 28 projects. We have never been back on any project for special consideration, because there were not additional burdens specifically mandated by Congress.

Senator BRADLEY. But FERC could have put those additional burdens on, even absent ECPA.

Mr. MOWER. No. I will tell you why.

Senator BRADLEY. Yes?

Mr. MOWER. Because we have worked closely with FERC throughout the licensing process. FERC in fact was upset because of the DO and oxygenation level requirements. They said, these are not normal levels, there are other levels that are acceptable, that we would approve as being acceptable, FERC would approve.

FERC also asked us to do specific studies. FERC also asked us to do specific studies at locations in Harriman State Park, in fact at one time insisted that we increase releases from the project to mitigate potential effects on releases now taking place.

We had to point out that the ECPA legislation requires that we do not change or alter existing releases, either temperature or flow.

So yes, I think that there are mandated special requirements by FERC.

Senator BRADLEY. Okay, and these things that you were conveying took place in your discussions with FERC, is that correct?

Mr. MOWER. Yes.

Senator BRADLEY. So that whatever took place in your discussions does not go to the question of whether FERC had the legal authority to impose the things that you say were imposed only under ECPA?

Mr. MOWER. We never challenged FERC's legal capability.

Senator BRADLEY. Senator McClure, do you have any further questions?

Senator MCCLURE. I have no further question, but I would like to make a comment. It was certainly my intention as the author of that legislation to impose additional restraints. I would be amazed if as a matter of fact it did not have that effect.

Senator BRADLEY. Okay.

Would anyone on the panel like to offer a parting comment? Mr. Lawson?

Mr. LAWSON. I would like to just say one thing. It is my belief, and I believe I can back that up, that almost all the sportsmen's groups in Idaho have been opposed to this project from the start. The reason that there were some extra criteria put into the FERC license request was because of that, and I believe that would have held it up anyway, because there would have been a tremendous battle over this if that language had not gone in.

So I do not believe the sportsmen should be held responsible for this $1 million payment. Senator McClure is taking the responsibility and I do not think he needs to do that, because it had to—I think it would have been required anyway.

Senator BRADLEY. Mr. Lawson, that is a very interesting perspective and I think it is one that probably has a strong element of truth to it. I mean, all of us as Senators try to go the extra length to try to remove the burdens from our constituents. I cannot speak for Senator McClure, but that is clearly what I perceive to be his interest, and those were admirable interests.

As you say, maybe that was going the extra mile, but that the requirements would have been there anyway. No one knows.

The only thing we know is that we now have a bill before us and the question is whether we move ahead on the bill, and I personally feel that everyone's testimony today has been very helpful for us in considering the bill.

I would like to close by thanking the Commissioner for his comments. I have only one other question related to this, and that is what is the status of the trumpeter swan?

Mr. UNDERWOOD. I can report back to the committee. I am not sure exactly what the current status is. I know that they are trying to work out some arrangements, and I know our people in the Pacific Northwest are working on that.

Senator BRADLEY. If you could, I would like to have a report.

Mr. UNDERWOOD. I would be more than happy to do so.

Senator BRADLEY. As it relates to the Henry's Fork and winter habitat.

Mr. UNDERWOOD. I would be more than happy to.

[The information follows:]

TRUMPETER SWANS ON THE HENRY'S FORM

A majority of the Rocky Mountain population of trumpeter swans winters in the Henry's Fork downstream from Island Park dam on the Minidoka Project and feed on vegetation that grows on the stream bottom which requires open water. Steadily increasing numbers of local swans since implementation of the storage agreement providing for open water and a large wintertime influx of migrating swans from Canada, have impacted the available habitat.

Reclamation has cooperated in conducting an instream flow study to determine flow requirements to maintain open water during the winter. We are also contributing to research which will aid in expanding the winter range of the Rocky Mountain population of trumpeter swans. In addition, we are working with wildlife agencies to release the amount of water they determine is needed for the swans.

Reclamation is continuing to work with several public and private organizations to arrive at a permanent solution for winter flow releases. We envision this solution will involve the purchase of water from the Upper Snake River water bank. This water will then be delivered from Island Park Reservoir to supplement the flow below Island Park Dam during water short years. Water storage exchanges involving Palisades and American Falls Reservoirs will also be a part of the solution. Agreements will be completed in 1990.

The U.S. Fish and Wildlife Service, in cooperation with the Idaho Fish and Game Department, and Reclamation, has completed a study of the Henry's Fork in the Harriman Park area to quantify the stream resource and determine required minimum, maximum, and optimum flows for maintaining suitable swan feeding conditions. A draft of the results of the study is being reviewed.

Finally, the Idaho Fish and Game Department is in the process of moving some of the swans to such locations as the Snake River bottoms at American Falls and Grays Lake in an attempt to spread out the population and make the swans less vulnerable.

Senator BRADLEY. Well, thank you all very much for your testimony. It has been helpful.

Now we are coming to the final panel in this day, and these are the individuals who have waited for a long time from New Mexico: Leonard S. Knox of Vermejo Conservancy District; Neil Stillinger of Santa Fe. And I would like to have Gary Esslinger at the table as well so that we can talk about S. 1590, if we could. Is Gary Esslinger—no, only Mr. Underwood is going to talk about it, all right.

S. 1932. Mr. Knox, Mr. Stillinger, I am sorry that you have had to wait around so long. Mr. Underwood, do you have any comment on S. 1932 or S. 1590?

Mr. UNDERWOOD. Yes, let me briefly address both of those.

In this particular case, we have no objections with S. 1932. However, we were looking for potential changes to provide for a permanent conservation easement and this was in terms of Lake 13.

I think there may be a need for some clarification. I would like to have an opportunity for my staff to work with the staff of the committee. There seems to be some disagreement as to the status, that there may be an agreement that already applies to that easement, and I would like to have the opportunity to clarify that.

This is S. 1932. Basically this involves three irrigation storage Lakes, 12, 13, and 14. We have title to 13. The Vermejo Conservancy Districts seeking to gain title to 13. There was some interest expressed in terms of having an easement, and we can clarify that.

[The prepared statement of Mr. Underwood on S. 1932 follows:]

PREPARED STATEMENT OF DENNIS B. UNDERWOOD, COMMISSIONER, BUREAU OF RECLAMATION, DEPARTMENT OF THE INTERIOR, ON S. 1932

I am pleased to have this opportunity to present testimony on S. 1932, which would clarify issues relating to the transfer of lands and facilities to the Vermejo Conservancy District, located in Northeastern New Mexico.

We would not object to enactment of S. 1932 if further clarifying language is incorporated. The bill is in the form of an amendment to title IV of the Act of December 19, 1980 (P.L. 96-550) which provided for the District and Reclamation to amend the repayment contract and for the transfer of lands back to the District as well as deferral of the District's repayment obligation to the United States for the construction, operation, and maintenance of the Vermejo Project. P.L. 96-550 authorized transfer to the District of all lands or interest in lands acquired by the Federal Government except those needed for management of the Maxwell National Wildlife Refuge.

The District and Reclamation have reached agreement on most of these Issues but have been unable to reach a consensus as to which lands would be transferred to the District through amendment to the contract.

The controversy is centered around Dams 12, 13, and 14 which are currently operated by the U.S. Fish and Wildlife service as part of the Maxwell National Wildlife Refuge.

The District currently holds title to Dams 12 and 14 and has a two-year lease agreement with the Service for the management of the hunting, fishing and grazing rights on and around those two lakes. This lease agreement is scheduled for renegotiation in 1992.

Reclamation currently holds title to Dam and Lake 13 which is operated for the benefit of the Refuge through an agreement among the District, Reclamation and the Service.

The District wishes to have title to Dam and Lake 13 returned to them through enactment of this bill. The Bureau of Reclamation would not object to the transfer of Dam and Lake 13 to the District if agreement can be reached on operational issues pertinent to the District and the Refuge.

Reclamation believes that this can be achieved by further clarifying the language of S. 1932 to state that the lands or interest in lands shall be transferred to the District with the exception of a perpetual conservation easement including the hunting, grazing and fishing rights which shall be retained in the United States, and be administered by the Secretary through the Maxwell National Wildlife Refuge. Further, the bill should specifically identify those lands being retained by the Federal Government. This would eliminate substantial legal problems and clarify negotiations. Reclamation and the Fish and Wildlife Service have reviewed the language of S. 1932 and suggest the changes shown on the attachment to this testimony.

These changes would accomplish the objectives I have described and thus remove the impediments that have prevented the actions envisioned by P.L. 96-550.

Therefore, Reclamation would not object to S. 1932 with the changes I have recommended.

Mr. Chairman, thank you for the opportunity to provide comments on this matter. I would be pleased to answer any questions.

PROPOSED AMENDMENTS

Proposed Amendments to S. 1932, a bill to amend title IV of the Act of December 19, 1980 (94 Stat. 3227) to provide further relief to the Vermejo Conservancy District from its repayment obligation for the construction, operation, and maintenance of the Vermejo reclamation project, and for other purposes.

1. Page 2, line 9; following the word "District" insert "to amend Contract 178r-45E".
2. Page 2 line 14; following the word "project," insert "with the exception of a perpetual conservation easement including the hunting, fishing, and grazing rights which shall be retained in the United States and be administered by the Secretary of the Interior through the Maxwell National Wildlife Refuge,".
3. Page 2, line 22 strike "and" and insert in lieu thereof "in place of".
4. Page 2, line 24; strike "1985" and insert in lieu thereof "1990".
5. Page 2, line 24; strike 199O and insert in lieu thereof "1992".

ADDITIONAL INFORMATION OF DENNIS B. UNDERWOOD, ON S. 1932

In the testimony provided to the Subcommittee, the statement indicated the Bureau of Reclamation's support for S. 1932, to return title of Lake 13 to the Vermejo Conservancy District.

The statement noted Reclamation believes this can be achieved by further clarifying the language of S. 1932 to provide that the lands or interest in lands, shall be transferred to the District—with the exception of a perpetual conservation easement including the hunting, grazing, and fishing rights—which shall be retained by the United States, and be administered by the Secretary through the Maxwell National Wildlife Refuge, a facility of the U.S. Fish and Wildlife Service.

Senator Pete Domenici of New Mexico, during the hearing, inquired as to the need for a perpetual conservation easement, especially in light of the cooperative agreement dated December 5, 1969, and the provisions of P.L. 96-550 which provides ". . . or other contractual arrangements which may be held by the Secretary for management of the Maxwell National Wildlife Refuge, for wildlife enhancement purposes, shall not be transferred and shall be maintained consistently with existing arrangements."

Notwithstanding the 1969 cooperative agreement, the U.S. Fish and Wildlife Service continues to feel that a perpetual conservation easement is necessary.

Senator **BRADLEY**. And on S. 1590?

Mr. **UNDERWOOD**. On S. 1590, we support the concept of the legislation. The bill is to transfer certain rights-of-way to the Elephant

Butte Irrigation District so they can assume complete operation and maintenance over them. This is part of the Rio Grande project and serves New Mexico and Texas.

We support the concept of the legislation, but suggest that the legislation clarify that the United States retain ownership in the diversion dams since they may have an impact on the amount of water delivered to downstream users.

We also understand that El Paso Water Improvement District No. 1 is considering a similar request, and if that is the case, we suggest that request be included in the bill.

Both districts have completed all of their repayment obligations to the United States and currently operate and maintain the facilities in their respective districts. We are supportive of transferring those rights-of-way to the Districts so that they can improve their operation by assuming complete operation and maintenance over them.

[The prepared statement of Mr. Underwood on S. 1590 follows:]

PREPARED STATEMENT OF DENNIS B. UNDERWOOD, COMMISSIONER, BUREAU OF RECLAMATION, DEPARTMENT OF THE INTERIOR, ON S. 1590

Mr. Chairman, I am pleased to appear before you today to provide the position of the Bureau of Reclamation on S. 1590.

The bill would transfer certain rights-of-way to the Elephant Butte Irrigation District so it may assume ownership over them.

Reclamation supports the concept of this legislation, but would like to suggest a few modifications.

The bill does not specifically state that the titles to Elephant Butte and Caballo Dams, and Percha, Leasburg, and Mesilla Diversion Dams would remain with the United States and thus could be interpreted to allow the transfer of the diversion dams. It is Reclamation's position that the United States must retain ownership and operation of these dams since they have a significant impact on the amount of water delivered to other downstream users.

The El Paso Water Improvement District No. 1 has recently indicated that it is also considering requesting the transfer of rights-of-way for its portion of the project. Because of that new development, Reclamation suggests including the proposed transfer in this legislation, if that transfer is intended.

Both Districts have completed all construction repayment obligations to Reclamation and currently operate and maintain facilities in their respective Districts, with the exception that the United States operates the aforementioned diversion dams in the Elephant Butte Irrigation District.

I would be pleased to respond to any questions.

Mr. UNDERWOOD. Finally, Mr. Chairman, we support the concept of S. 2716. This is basically the Warren Act. It would provide for improved water management.

However, we do have two areas of concern. One, we would like to see an amendment that would include that the Secretary may contract pursuant to the act to include cities, water agencies, and other political subdivisions of a State, as well as other entities as the Secretary may find appropriate.

We would suggest that Section 3 be deleted, more out of lack of understanding of the potential impact, and seeing that the House did similarly, and we would suggest that that be deleted.

[The prepared statement of Mr. Underwood on S. 2716 follows:]

PREPARED STATEMENT OF DENNIS B. UNDERWOOD, COMMISSIONER, BUREAU OF RECLAMATION, DEPARTMENT OF THE INTERIOR, ON S. 2716

Mr. Chairman, S. 2716 is an effort to resolve a major deficiency in the Warren Act. The Bureau of Reclamation supports the concept of amending the Western Act to allow greater use of facilities in managing water resources. We do, however, have some specific concerns that must be addressed in order for the Administration to support S. 2716.

The basic objective of S. 2716 is to broaden the purposes of the Act to permit cities and other urban area water agencies to contract with the Secretary to utilize excess capacity in Bureau of Reclamation facilities for municipal and industrial water supplies.

The Warren Act is one of the early acts governing the reclamation program. It authorizes the Secretary of the Interior to contract with certain non-Federal entities:

—to permit them to utilize existing excess capacity in Bureau of Reclamation project facilities for the storage, impoundment or carriage of water for irrigation purposes and for which a state water right is held;
—for the participation by non-Federal entities in the construction of project works which are in excess of the capacity required to irrigate project lands, and;
—for them to construct project facilities prior to Reclamation's initiation of project construction and receive credit for their contribution to the project.

A Warren Act contract may provide for the delivery of irrigation water to either or both lands within and without the congressionally authorized service area of a reclamation project.

The Warren Act was not intended, nor does it provide, authorization for the sale of surplus water from the Federal project. The Warren Act was intended to provide authorization for the use of the excess storage or conveyance capacity of Federal facilities for the use of landowners who have water rights independent of those that they may have or he able to obtain through the United States. The rationale for this authorization was both pragmatic and beneficial.

Moreover, in most cases the Federal facilities have been constructed in the most desirable locations. Absent the Warren Act, Federal contractors who have non-Federal water rights, in addition to their reclamation contracts rights, or landowners with only non-project water rights, would have only one option to address their storage and conveyance needs. They would have to build their own impoundment and delivery facilities and, thus, duplicate that which was already available in the Federal facilities. The Warren Act allows the excess capacity of Federal reclamation facilities to be utilized in a logical fashion for the purpose of conveying reclamation project water, as well as non-reclamation project water. The Warren Act avoids the need to construct duplicate facilities, as well as the wasted time, expense, and environmental impacts that would be associated with the construction of those facilities.

This is particularly important where non-Federal storage conveyance facilities are constructed by state or local entities within the same water as the Federal facilities, and where all facilities (Federal and non-Federal) can be utilized most efficiently if they are operated in conjunction with each other.

The Act, as originally enacted, related solely to the use of excess capacity in reclamation project facilities for irrigation water. This limitation was consistent with the major uses of reclamation water at the time the Act was passed. In recent years it has become obvious that the Act should be updated. The purpose of these amendments is to authorize the Secretary to enter into contracts, pursuant to the Warren Act, for municipal, industrial, domestic, or miscellaneous purposes, including fish and wildlife purposes.

We recommend that the bill be amended to clarify the types of non-Federal entities with whom the Secretary may contract pursuant to the Act to include cities, water agencies, and other political subdivisions of a state, as well as such other entities as the Secretary may find appropriate.

We have additional concerns relating to the impact of section 3 on current Warren Act contractors, and propose that section 3 be deleted. The House deleted a similar provision in H.R. 2567 prior to its passage.

We also believe that any amendments to the Warren Act should address appropriate charges for the use of facilities to provide municipal and industrial water supplies.

Mr. Chairman, we would be pleased to work with you to resolve these concerns.

Senator **BRADLEY**. Thank you very much, Mr. Underwood.

Now let us here on S. 1932 from Mr. Knox first and then Mr. Stillinger. Your full statements will be submitted to the record. As you saw today, the most effective witnesses were the witnesses who just stood up and spoke from their hearts and minds. So please do that.

Mr. Knox.

STATEMENT OF LEONARD S. KNOX, MANAGING AGENT, VERMEJO CONSERVANCY DISTRICT

Mr. Knox. Thank you, Mr. Chairman.

I am here on behalf of the Vermejo Conservancy District. 10 years ago Senator Domenici introduced legislation which became Public Law 96-550, to relieve the Vermejo Conservancy District of its indebtedness—or to defer payment, I am sorry, of its indebtedness, to return the property to the Conservancy District subject to a contractual arrangement, contract number 1406500131713, which is the one the Commissioner has some question about.

Up until approximately 1984, the Bureau of Reclamation had no interest in Lakes No. 12 and 14, which were never part of the Vermejo Conservancy District project. They belonged to the Conservancy District, which has other lands that the Government does not hold fee title to, so to speak.

We have an agreement with the U.S. Fish and Wildlife on 12 and 14, which is a standard lease form drawn up by them that we have with other parties that lease district lands. There are certain conditions, et cetera, et cetera, in these leases and, as the Commissioner stated, the lease does expire in 1992.

It is our understanding what has really held up the complete signing of Public Law 96-550 with the districts on it has been the position of U.S. Fish and Wildlife to read into the law things that we believe and until 1985 the Bureau of Reclamation and everyone else believed to be fairly simple. 5 years ago we were in muddy water. We are in muddy water today.

The bill, the amendment that the Senator has introduced, is very straightforward. We think it is what it should have been 10 years ago. The contract, the cooperative agreement that you have a copy of, gives the U.S. Fish and Wildlife Service administration over these lakes. Article 5 or paragraph 5 of it, they have responsibility for regulating public use and access on the wildlife and recreational areas as appropriate to prevent interference of such use and access with the wildlife management.

They have everything that they want here. We do not see, as I think the Senator was saying, any need to amend the amendment, so to speak.

We have indicated all along that we are prepared to honor this contract. We do have a problem with Lakes 12 and 14. Those are privately owned. The Government does not have fee title to them. We have indicated that we are willing to work with U.S. Fish and Wildlife as far as leasing these lakes to them.

But to give them a perpetual lease on what is private land we do not believe is in the best interests of the district.

There are two things happened with Public Law 96-550. One, the Government cut off the money 10 years ago. We have spent approximately $250,000 in money, and some of it we had to borrow, in order to upgrade and keep this property up in accordance with Bureau of Reclamation's requests, SEED requirements, et cetera. We believe that we have lived up to our obligation. The Federal money has stopped.

We need to maintain ownership of Lake 13 because to divide our system, with the Government, Fish and Wildlife, owning and controlling one lake and we own and control the rest of them, then if we have had 10 years of muddy water I see nothing but silt from here on in.

With that I would close.

STATEMENT OF NEIL C. STILLINGER, COUNSEL, VERMEJO CONSERVANCY DISTRICT

Mr. STILLINGER. Mr. Chairman, thank you very much for the opportunity to come before the committee and express my support for S. 1932, which we appreciate Senator Domenici and Senator Bingaman introducing.

This bill clarifies what we always thought was the intent of Congress in 1980, that is to transfer all of the district's facilities, including Lake 13, to the district, subject to the contractual arrangements which are specifically designated in the bill as an exception to the transfer of assets to the district. And it includes the cooperative agreement, which apparently the Commissioner was unaware of when he responded to Senator Domenici's question.

This cooperative agreement allows, as Mr. Knox says, the Fish and Wildlife Service to administer Lake 13 in such a way as to carry out the purposes of the wildlife refuge, the Maxwell National Wildlife Refuge.

Public Law 96-550 specifically stated that the assets of the district would be returned to the district and that the district would operate and maintain the project for the project beneficiaries, which include the Maxwell National Wildlife Service. This cooperative agreement, which has existed for over 20 years and will exist perpetually, is designed specifically for that purpose. It is excepted from the transfer.

It gives to the Wildlife Service all that they need to carry out the purposes of the Maxwell National Wildlife Refuge. Therefore, we see no need for a conservation easement, whatever that is. That is a specific species of property under New Mexico law. I do not know what the Commissioner has in mind for this legislation.

But in any event, we see no need for such a thing. The district concurred in this agreement back in 1969. It is an ongoing or permanent agreement. The district certain intends to honor it. Nobody, the district or anybody else, wants to disturb the use of Lake 13 as the refuge for the geese and ducks that go into there and have for probably centuries, and will probably long after we are all gone.

So there is no intent on the part of the district to interfere with any rights that the Wildlife Service has in using the refuge. The whole problem has arisen because the Bureau of Reclamation, as Mr. Knox said, several years after we started this process suddenly began inferring or stating affirmatively that Lake 13 would be retained by the Government.

Now, that just makes no sense under the whole legislative scheme of Public Law 96-550, because it is the district which is responsible for the expense of operating and maintaining Lake 13. The Federal Government under 96-550 is prohibited from spending any more money for the maintenance and operation of Lake 13. There is one exception to that, but it is a very small exception.

So we think that Congress intended in 1980 to transfer that lake, along with all the other facilities acquired for the Vermejo project back in the fifties. To rehabilitate those lakes, they acquired title in '54 and we think it makes—the bill before you now makes it crystal clear what Congress' intent was in 1980, and it certainly makes it clear now, that these lands and project facilities, including Lake 13, go back to the district.

The district will operate and maintain them for the beneficiaries of the project. They will pay for the expense of it and have, as Mr. Knox says, have paid out large sums of money for maintaining and operating these lakes.

We would urge that this committee recommend favorable approval of S. 1932 and that the facilities be returned to the district, all the facilities be returned to the district, subject to the exceptions.

The only other exception is the lands that the Government bought from individual ranchers for the refuge. We have no interest in those whatsoever. So we think that the bill should be approved.

[The prepared statement of Mr. Stillinger follows, attachments have been retained in subcommittee files:]

PREPARED STATEMENT OF NEIL C. STILLINGER, COUNSEL, VERMEJO CONSERVANCY DISTRICT

Mr. Chairman, members of the Committee, my name is Neil C. Stillinger. I live in Santa Fe, New Mexico. I am the attorney for the Vermejo Conservancy District.

I am very pleased to have the opportunity to appear before the Committee and present testimony in support of S. 1932. The purpose of this legislation is very straight forward. It would amend Title IV of the Act of December 19, 1980 (Public Law 96-550) to provide further relief to the Vermejo Conservancy District by transferring all the Vermejo Project facilities, including Lake 13, from the United States to the District except for lands purchased by the United States from various landowners for the Maxwell Wildlife Refuge and certain contractual arrangements specifically designated in S. 1932 in which the District either has concurred or is party thereto.

The necessity for the legislation arises because of a controversy between the District and the United States Bureau of Reclamation, and more particularly the United States Fish and Wildlife Service, as to whether the Congress intended in P.L. 96-550 to transfer title to all of the District facilities, including Lake 13, from the United States to the District. Lake 13 is the District's major facility for storage of Chico Rico Creek water for the Vermejo Conservancy District, with a capacity of 4,783 acre feet. Water is released by the District from Lake 13 to irrigate many of the 7400 acres of land in the Vermejo Project.

The language in Public Law 96-550, which is in dispute between the District and the Bureau of Reclamation reads as follows:

> "Transfer of project facilities to the district shall be without any additional consideration in excess of the existing repayment obligation of the district, and shall include any related lands or interest in lands acquired by the Federal Government for the project, except that any lands or interests in land, or interests in water, or other contractual arrangements which may be held by the Secretary for management of the Maxwell National Wildlife Refuge, for wildlife enhancement purposes, shall not be transferred and shall be maintained consistently with existing arrangements."

S. 1932 would simply delete this language and substitute in its place the following language:

> "Effective as of the date of the above written consent of the Vermejo Conservancy District all project facilities are hereby transferred to the District. The transfer to the district of project facilities shall be without any additional consideration in excess of the existing repayment contract of the district and shall

include all related lands or interest in lands acquired by the Federal Government for the project, but shall not include any lands or interest in land, or interests in water, purchased by the Federal Government from various landowners in the district, consisting of approximately two thousand eight hundred acres, for the Maxwell Wildlife Refuge and shall not include certain contractual arrangements namely Contract No. 14-06-500-1713 between the Bureau of Reclamation and the Bureau of Sport Fisheries and Wildlife, and concurred in by the district, dated December 5, 1969, and the lease agreement between the district and the Secretary dated January 17, 1985, and expiring January 17, 1990, for 468.38 acres under the district's lakes 12 and 14, which contractual arrangements shall be maintained consistent with the terms thereof."

In my judgment the deletion of the above quoted language from P.L. 96-550 and the substitution of the language of S. 1932 will make Congress's intent crystal clear, if it was not before; namely, that all of the District's facilities, including Lake 13, are returned to the District, as of the date of the District's consent to the amendatory contract, or March 12, 1982. (See attached letter of March 12, 1982 from Neil C. Stillinger, Attorney for Vermejo Conservancy District to D.W. Webber, Acting Regional Director, Bureau of Reclamation). The lands or interests in land not included in the transfer to the District would be (1) 2800 acres of land purchased by the United States from various landowners for the Maxwell National Wildlife Refuge; (2) the cooperative agreement dated December 5, 1969, between the Bureau of Reclamation and the Bureau of Sport Fisheries and Wildlife for use of Lake 13 as a wildlife refuge concurred in by the District, (Copy of Cooperative Agreement dated December 5, 1969 between Bureau of Reclamation and Bureau of Sport Fisheries and Wildlife is attached) and (3) the lease agreement dated January 17, 1985, between the Secretary of the Interior and the District for the lease of 468.38 3cres under the District's Lakes 12 and 14. This lease expired earlier this year but has been renewed by the parties for two more years.

The reason that Lake 13 became the focal point of the dispute between the District and the Bureau of Reclamation undoubtedly lay in the fact that Lake 13 is used by the Wildlife Service for wildlife habitat. Despite the December 5, 1969 agreement mentioned in S. 1932, in which the District concurred, the Federal agencies were of the opinion that existing language in P.L. 96-550 required that the Secretary of the Interior continue to hold title to Lake 13 for the benefit of the Maxwell National Wildlife Refuge. The District, on the other hand, believed that Congress's intent was to transfer Lake 13 back to the District subject only to the contractual arrangement whereby the wildlife Service could use Lake 13 for wildlife habitat on a permanent basis. In other words, the District read P.L. 96-550 as excepting from the transfer of the District's facilities from the United States to the District only that "contractual arrangement" which the Secretary "holds" for the management of the Maxwell National Wildlife Refuge, being the December 5, 1969 agreement. The District has always agreed to honor that agreement.

Because of the District's long standing water supply and financial problems, the purpose of P.L. 96-550 was to grant relief to the District in the form of deferring the payments owing from the District to the United States under the August 7, 1952 repayment contract for monies spent by the United States to rehabilitate certain of the District facilities including Lake 13.

Under P.L. 96-550 these payments would be deferred until such time as the Secretary of Interior determined that repayment by the District would be reasonably feasible. Because P.L. 96-550 clearly stated that the Federal Government would not be spending any more money on the operation and maintenance of the Vermejo Project the legislative scheme was that the United States transfer all the District facilities back to the District with the provision that the District would operate the facilities for the benefit of the project beneficiaries including the Maxwell National Wildlife Refuge.

Accordingly, when P.L. 96-550 became law in December, 1980, it was assumed by the District that all of the facilities would be returned to the District subject to the status of the Maxwell National Wildlife Refuge being maintained in accordance with the December 5, 1969 agreement. That this was also the understanding of the Bureau of Reclamation early on in the negotiations is evidenced by the attached correspondence. This correspondence repeatedly refers to the transfer of the District's facilities back to the District. (See, attached letters of Eugene Hinds, Regional Director, Bureau of Reclamation dated June 29, 1983 to Philip B. Mutz, Interstate Stream Engineer, July 26 and November 4, 1983 to Leonard Knox, President, Vermejo Conservancy District and December 29, 1983 to New Mexico Department of Game & Fish).

What the parties did focus on during the early stage of the negotiations was deferral of the District's obligation to resume payments to the United States based upon certain criteria the Secretary of the Interior could use to determine when repayment by the District was reasonably feasible. The District's principal concern at that time was that the District not enter into a contract with a repayment obligation the District could not reasonably meet. The Congress recognized in P.L. 96-550 that the District had over the years encountered considerable difficulty in making the payments due under the 1952 repayment contract. The primary difficulty was the shortages of water to the District's 7400 acres of irrigated land in the Vermejo Project. These shortages began in the 1960s and continued throughout the 1970s. The District's inability to meet its repayment obligation to the United States coincided with these water supply shortages.

In June, 1986, after protracted negotiations, virtually all of which concerned the criteria to be used to determine when additional repayment by the District to the United States was feasible, an amendatory contract was agreed upon by the parties (See attached Amendatory Contract For Providing Relief From Making Annual Repayments, Installments And Transferring Title Of Project Works To The District). Many of the negotiating sessions took place in Senator Domenici's office in Santa Fe. The District believed at the time that all issues concerning the repayment contract had been resolved and all assets of the District acquired by the United States for the Vermejo Project would be returned to the District.

However, before the amendatory contract could be executed by the parties the Bureau of Reclamation informed the District, for the first time, (See letter of July 14, 1986 from Neil C. Stillinger, Attorney for Vermejo Conservancy District, to Eugene Hinds, Regional Director Bureau of Reclamation) that Lake 13 would not be included in the transfer of assets from the United States to the District pursuant to the amendment to Article 15 of the attached contract. It appears that the impetus for the Bureau's position on the transfer of the Lake 13 to the District came from the United States Fish and Wildlife Service. (See attached opinion of the Assistant Solicitor, Branch of Water and Power, Department of Interior, dated June 24, 1986).

In his June 24, 1986, opinion the Assistant Solicitor expressed the view that the Amendatory Contract must provide for retention of title by the United States to any lands or interests in lands "necessary for management of the Maxwell National Wildlife Refuge."

Whatever the case, the Regional Director of the Bureau's office in Amarillo, Texas took the position that P.L. 96-550 did not require the United States to transfer Lake 13 to the District because the Secretary held Lake 13 for the Maxwell National Wildlife Refuge for wildlife enhancement purposes (see attached letter of August 12, 1986 to Neil C. Stillinger, Attorney for Vermejo Conservancy District from Eugene Hinds, Regional Director, Bureau of Reclamation). One of the legal rationales offered for the Bureau of Reclamation's position on Lake 13 was the attached opinion of the Assistant Solicitor, Branch of Water and Power, Department of the Interior.

In reply to the Regional Director's August 12, 1986 attorney for the District's attorney pointed out that Congress had not used the word "necessary" in determining what lands or interests in land the Secretary of Interior held for management of the Maxwell National Wildlife Refuge. In other words, the Assistant Solicitor had read language into P.L. 96-550 that Congress itself had not written. One of the more significant points made by the District's attorney was that the United States could not have acquired title in 1954 to Lake 13 for wildlife purposes when the Maxwell National Wildlife Refuge did not even exist until several years later. (See attached letter of November 7, 1986 to Regional Director, Bureau of Reclamation from Neil C. Stillinger, Attorney for Vermejo Conservancy District).

Despite the District's best efforts to convince the Bureau of its erroneous interpretation of P.L. 96-550 it became apparent to the District that the Bureau of Reclamation would not retreat from its position that Lake 13 must be retained by the United States for the wildlife refuge. (See attached Memorandum of March 5, 1987 to Regional Director, Bureau of Reclamation, from Assistant Solicitor, Branch of Water and Power, Department of the Interior, on which the District commented by letter dated May 14, 1987). The chief sponsor of P.L. 96-550, Senator Domenici, informed the Secretary of the Interior that the Bureau of Reclamation's interpretation of P.L. 96-550 was not in accord with Congressional intent. (See attached letter of August 10, 1988 from Senator Domenici to Secretary Hodel). The Secretary responded by reiterating that the Fish and Wildlife Service required the use of Lake 13 for its management of the Maxwell National Wildlife Refuge. (Letter to Senator Domenici from Secretary Hodel dated January 10, 1989, also enclosing Opinion of Assistant Solicitor, Branch of Water and Power, to Regional Director, Bureau of

Reclamation, dated December 8, 1988). The District, therefore, concluded that because Lake 13 is such a significant and integral part of its water delivery system, that it was necessary to request legislation to amend P.L. 96-550 to provide for the transfer of all the District's facilities, including Lake 13, to the District except for lands, interests in lands and contractual arrangements noted therein.

Because S. 1932 would accomplish this objective the District urges the Committee to give its approval thereto.

Senator **Bradley**. Mr. Underwood, do you have any reaction?

Mr. **Underwood**. The only comment that I could make is that we concur that the 1980 Act provides for the transfer of Lake 13. The only thing that I would like to clarify was the agreement. I do have a copy of the 1980 Act in front of me where it talks about existing arrangements that would stay in effect.

What I would like to have is the opportunity to discuss this within the Department and report back to the committee, if that would be acceptable.

Senator **Bradley**. That would be acceptable and we would appreciate that.

Mr. **Underwood**. Thank you.

Senator **Bradley**. Mr. Woodrow Gary from Elephant Butte Irrigation District, Las Cruces, New Mexico, on S. 1590. Welcome to the subcommittee. You have the distinction of being the last witnesses.

STATEMENT OF WOODROW O. GARY, ELEPHANT BUTTE IRRIGATION DISTRICT, ACCOMPANIED BY STEVEN HERNANDEZ, HUBERT & HERNANDEZ, COUNSEL; AND GARY ESSLINGER, MANAGER

Mr. **Gary**. Well, in the interest of time maybe I can be the least. [Laughter.]

Mr. **Gary**. The name is Woodrow Gary and I certainly want to take this opportunity, Senator Bradley, of expressing my gratitude for appearing before you. I am here representing the board, Elephant Butte Irrigation Board, and I would like to refer to it in the future as the EBID.

With me are two people that came up with me: Steve Hernandez, a lawyer for the EBID; and our Manager and Director, Gary Esslinger. And any questions you have, I will probably refer some of these technical questions, if such arise, to these people.

After listening to certain reports, especially by the Commissioner over here, I would just like to have my testimony or statement included in the record, and I will diverge from there.

Senator **Bradley**. Your full statement will be included in the record.

Mr. **Gary**. Thank you, sir.

Since 1979, we took over the maintenance of three diversion dams, and our hope is also to take over their operation. Now, I do not think we really want to own them in the sense that we want to buy them or anything like that. But if we would take the operation of this over, due to floods that we have at certain times, and we are on duty 24 hours a day during the irrigation season, whereas otherwise we have to call and get somebody to regulate these gates and they have to drive from El Paso, and one of those dams is over 100 miles, basically 100 miles. Give me a little leeway on that.

By the time he gets up there, the flood may be all over with at that stage of the game, because they do run very rapidly in the State of New Mexico, with the slope of ground.

But our main purpose today here is to get the right-of-ways back, or rights-of-way, I should say. We are having an enormous amount of trouble, Senator, with the idea of encroachment. We have people that like to build houses on these rights-of-way. We have gardens, we have flowers.

And they are dirt ditches and at times they do break. We have gophers in our particular area. I do not know whether people are familiar with a gopher or not, but they will break a ditch. For us to get some of our heavy equipment down there is almost an impossibility.

We have the eleventh fastest growing area in the United States, and I do not see any future that it will not grow very rapidly and more encroachments occur. We have many specific examples if the committee is interested in hearing about them. Otherwise, just take our word for it.

Senator Bradley. We will take your word for it.

Mr. Gary. My father and myself, we had about 40 years of working with water in the State of New Mexico, serving both on the Elephant Butte Irrigation District and the Interstate Stream Commission.

That is about the end of my testimony, sir.

[The prepared statement of Mr. Gary follows:]

PREPARED STATEMENT OF WOODROW O. GARY, ELEPHANT BUTTE IRRIGATION DISTRICT

Mr. Chairman, my name is Woodrow O. Gary, and I am representing the Board of Directors of Elephant Butte Irrigation District. With me here today to help answer any questions the Committee may have is Steven Hernandez from the law firm of Hubert & Hernandez, P.A. and Gary Esslinger who is the Manager of the District. As senior member of the Board of Directors of the District, I wish to present the following statement in support of S. 1590.

The District made final payment to the United States in September of 1971 under various contracts commencing in 1906 for repayment of all costs associated with the New Mexico portion of the Rio Grande Project. Except for annual charges for Bureau of Reclamation operations, the District is not indebted to the United States. On February 15, 1979 the United States and the District entered into a contract for the transfer to the District of operation and maintenance of the New Mexico portion of the Rio Grande Project. The District has subsequently entered into an agreement with the United States to also take over maintenance of the three diversion dams located in the New Mexico portion of the project. For over ten years now, the District has been operated by the local users and all that remains to be done is the transfer back of rights of way acquired by the United States pursuant to the terms of the Reclamation Act of 1902. These rights of way were either paid for by the local users or donated by them in the early days of the project.

43 United States Code, Section 498 provides that when repayment to the Government has been made, the management and operation of the Irrigation works should pass to the owners of the land irrigated by the project. Thereafter, the works should be maintained at their expense. This act also provided that title to and the management and operation of the reservoirs and works necessary for protection of the reservoirs and works necessary for protection of the reservoirs shall remain with the Government unless otherwise provided by Congress. In the course of the debate on passage of the 1902 Reclamation Act, Representative Cowheard of Missouri stated:

> The title and control of the reservoirs themselves and the works incident to their maintenance, namely the dam and headgates, remain in the General Government precisely the same as the ownership of a navigable lake or river remains in the public, but the canals and the lateral ditches by which the water is diverted and applied to the land are under the *control, ownership* and *man-*

> *agement of the users* of the water just as the canals and ditches taken from a public lake or public river would be under their control, . . .
>
> 35 Cong. Rec. 6770 (1902) (Emphasis added).

The management and operation of the District works has been effectively transferred as of January 1, 1979. Certificate of final payment was signed by the Secretary of the Interior on October 5, 1979.

The District is in a unique situation in that it is one of the few projects where the entire cost of the project was charged to the water users who have now repaid their obligation to the United States in full. As is indicated in the previous quote from the Congressional Record, it was contemplated that ownership of the various canals and ditches which comprise the rights-of-way would be turned back over to the water users. In order to complete the takeover of the project as contemplated by Congress, all that remains is to convey back to the District the rights-of-way involved in the New Mexico portion of the project. This conveyance is what is contemplated by Section 498.

The Irrigation District in support of S. 1590 respectfully requests deeds of conveyance signed by the Secretary of the Interior conveying the easements and rights-of-way back to the District. As a practical matter, it would clearly benefit the United States to deed back these rights-of-way since any problem or lawsuit arising out of the construction, maintenance or operation of the ditches, canals and laterals would necessarily have to include the United States as a party defendant or an indispensable party of the action. Furthermore, as long as ownership of the canals and laterals is in controversy the District will continue to have problems with encroachers on the rights-of-way and the management and maintenance of same.

Ever since the takeover in 1979 by the District we have experienced numerous problems with encroachments on rights-of-way. The metropolitan statistical area in which the District is located is the eleventh fastest growing population center in the country and with growth has arisen problems of encroachment and maintenance which the Bureau of Reclamation has been unable to deal with in a timely manner. This merely contributes to maintenance problems of the District and amounts to increased costs for everybody.

In a United States Department of Interior document entitled "Assessment 87 . . . A New Direction for the Bureau of Reclamation", it was recognized that the Rio Grande Project was geographically isolated from other reclamation operations. Since the power plant and dam are geographically isolated the assessment suggested establishing a board of controls to assume operations of both water and power facilities. The turning over of rights-of-way back to the District parallels this suggestion and the District is currently contemplating implementing a board of controls or a special water master to assume the remaining operations of the Bureau of Reclamation.

Elephant Butte Irrigation District has shown over the years that it is a responsible entity and now requests the authorization from Congress to allow the Secretary of the Interior to deed back to Elephant Butte Irrigation District the easements and rights-of-way for the distribution of water to irrigated farm lands in New Mexico.

The Gary family through myself and my father have participated in the management of the District through the Board of Directors for over forty years and it has always been the goal of the District to completely manage, operate and maintain the New Mexico portion of the Rio Grande Project. We believe that our track record in managing our portion of the project for the last ten years speaks for itself in terms of efficiency and working for the best interest of its constituents and we feel that this final conveyance of the rights-of-ways back to the District will achieve maximum efficiency and benefits to its constituents. Myself, Mr. Hernandez or Mr. Esslinger would be more than happy to answer any questions you may have.

Senator BRADLEY. Well, thank you, Mr. Gary, for your testimony.

Let me ask Mr. Underwood, if I could. What is the dollar value of the property that this bill would authorize the Bureau to transfer to the district?

Mr. UNDERWOOD. Let me see if I have it with me. If not, I will provide it to the committee.

Mr. HERNANDEZ. Senator, could I comment on that?

Senator BRADLEY. Yes. And your name is?

Mr. HERNANDEZ. Steve Hernandez.

Senator, the property that is being transferred back was originally donated by the individual users in the project or purchased by project funds and repaid to the Government in the repayment contract.

Senator **Bradley**. I see, so that answers that. So you paid for the lands as part of your repayment contract with the Bureau. That was the question I was going to ask you, Mr. Gary, but that answers that.

Mr. **Underwood**. Yes.

Senator **Bradley**. Do you think, Mr. Underwood, that the bill provides adequate protection for the El Paso District's interests?

Mr. **Underwood**. Yes.

Senator **Bradley**. Does the Bureau have a general policy on how properties such as these should be managed once a district has completed its repayment contract?

Mr. **Underwood**. Other than in terms of efficiency? In this particular case where we are looking at improving the operation and maintenance of the project, improving the efficiency.

Senator **Bradley**. No?

Mr. **Underwood**. No.

Senator **Bradley**. If this bill passes, would you have the authority to control diversions from the river as may be needed to meet interstate and international obligations?

Mr. **Underwood**. We believe so, and that was part of my comment in terms of operation and ownership of diversions, dams on the river.

Senator **Bradley**. So you believe that you would be able to do that?

Mr. **Underwood**. Yes.

Senator **Bradley**. Will this bill affect in any way the Government's ability to meet its treaty obligations with Mexico?

Mr. **Underwood**. Not to my knowledge.

Senator **Bradley**. Concerning the Rio Grande?

Mr. **Underwood**. Not to my knowledge.

Senator **Bradley**. You are the person charged with knowing.

Let me thank all of you very much for your testimony. Mr. Knox, do you have any final words for us? It seems to me like it is a reasonable proposition, particularly since the Commissioner has agreed.

Mr. **Knox**. Just do not muddy the water no more.

Senator **Bradley**. It is about time, okay.

Let me thank all of you for your testimony. This concludes the hearing of the subcommittee. The record will stay open for 2 weeks for any further submissions. Mr. Gary, I want to thank you and Mr. Hernandez and Mr. Esslinger for coming all this distance. Mr. Knox, Mr. Stillinger, let me thank you for coming all this distance.

And, Commissioner, once again it was a good day. Thank you for coming.

The subcommittee is adjourned.

[Whereupon, at 5:02 p.m., the hearing was adjourned.]

APPENDIX

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

SNAKE RIVER PROJECT,
GREATER YELLOWSTONE COALITION,
Driggs, ID, July 23, 1990.

Senator BILL BRADLEY,
Hart Office Building, Washington, DC.

HON. SENATOR BRADLEY: Please accept this letter as testimony concerning H.R. 3694. H.R. 3694 proposes to provide payment to the Fall River Rural Electric Cooperative to facilitate construction of a hydroelectric project on the Henry's Fork of the Snake River in Idaho. I write on behalf of the Greater Yellowstone Coalition, a coalition of over 80 local, regional, and national groups with an interest in the conservation of the Greater Yellowstone Ecosystem. I write to strongly encourage you and your subcommittee on Water and Power to reject the proposal supported by H.R. 3694.

The Henry's Fork of the Snake River is a national treasure, considered by many to represent the finest fly fishing water in the continental United States. The river also supports a plethora of river dependent wildlife species, including the endangered bald eagle, rare trumpeter swans, herons, osprey, and many other birds and mammals. To put this system at risk by the facilitation of an environmentally and economically questionable hydroelectric project is simply not acceptable to many Idahoans and citizens across the country.

Potential siltation during dam reconstruction, nitrogen supersaturation, increased manipulation of river flows, and a development corporation with a notably weak record of compliance with environmental regulations combine to make this project a tremendous environmental risk at best. The proposal also appears to make little economic sense. Surely the federal government should not be paying private corporations to harm public resources of the magnitude of the Henry's Fork. Surely the federal government should not be risking its real natural treasures with marginal and untested development proposals.

Again, we in the Greater Yellowstone Coalition ask that you reject H.R. 3694. Help us protect the Henry's Fork. Further, as you consider this legislation, please note that the Henry's Fork needs greater, not lesser protection. Please consider the following points:

1. Conservationists throughout the region are asking that the responsible agencies prepare a comprehensive study of the Henry's Fork river basin. The river, despite its tremendous productivity, is threatened by excessive grazing and timbering on many of its tributaries and its main stem. Siltation of important fish spawning areas is a major concern.

2. In recent years, manipulation of stream flows, particularly in winter, have resulted in major losses of trumpeter swans, trout, and other fish and wildlife species which are dependent upon the river. Stream flows which maintain this important resource at its optimal productivity are a must.

3. The Henry's Fork has been given special state and federal designation because of its relatively wild and pristine beauty. The system needs better management by the federal and state agencies to conserve its wild characteristics and wildlife resources. Burgeoning recreation use should be examined for its impact, and managed to conserve the resources we come to the Henry's Fork to enjoy.

Thank you for your consideration of our concerns. We eagerly await a positive out come from your committee's deliberations on the Henry's Fork.

Sincerely,

MICHAEL B. WHITFIELD, *Director.*

PREPARED STATEMENT OF CARL L. SLINGERLAND, NEW MEXICO STATE ENGINEER

This statement is submitted in support of S. 1932 which would amend Title IV of the Act of December 19, 1980 and would provide further relief to the Vermejo Conservancy District from its repayment obligation for the construction, operation and maintenance of the Vermejo reclamation project.

Congress in 1980 through Public Law 96-550, provided relief to the District by establishing a means by which the Secretary of Interior could defer the District's repayment obligation to the United States until such time as repayment was reasonably feasible for the District. P.L. 96-550 also provided for the transfer by the United States to the District those assets of the District the United States acquired when certain of the District's facilities, including Lake 13, were rehabilitated in the 1950's.

I am advised that the amendatory legislation is necessary to insure that Lake 13 is transferred to the District along with the other Vermejo Project facilities.

The District derives its water supply from two sources, Chico Rico Creek and the Vermejo River. The water rights of the District were adjudicated by the District Court of Colfax County in 1935 and 1941.

Lake 13 is the District's major storage facility for Chico Rico Creek water. Releases are made from Lake 13 to irrigate much of the 7400 acres of land in the Vermejo Project. The storage capacity of Lake 13 is 4,800 acre-feet, and is more than half of the District's storage capacity available for storing water from Chico Rico Creek. In the recent past the District has suffered water supply shortages which has reduced the District's ability to grow crops on the Project lands and to meet its repayment obligation to the United States.

Lake 13 is a significant and integral part of the Vermejo Conservancy Districts water supply and delivery system. The return to the District of all District facilities should greatly assist the District in its responsibilities for the operation of the water supply system, and enhance the District's ability to meet its repayment obligation.

The opportunity to present my views on S. 1932 is sincerely appreciated.

PREPARED STATEMENT OF. RONALD R. ESAU, GENERAL MANAGER, SANTA CLARA VALLEY WATER DISTRICT

INTRODUCTION

The Santa Clara Valley Water District is located in San Jose, California. I appreciate this opportunity to present testimony before the Subcommittee. These comments today will focus on why the Warren Act of 1911 should be amended to provide for the storage and conveyance of nonproject water through federal facilities for municipal and industrial (M&I) as well as fish and wildlife purposes, and how doing so will benefit both local water districts and the Federal Government. At this point I would like to thank Senator Cranston and Senator Wilson for providing leadership on this important issue. I would now like to provide some background on the District and its water management objectives.

BACKGROUND

The Santa Clara Valley Water District was formed in 1929 and currently supplies water to more than one and one half million people in Santa Clara County, California. The highly urbanized northern portion of Santa Clara County is known as "Silicon Valley" because of the tremendous computer industry that has developed there. In contrast, the southern portion of the county is primarily agricultural, but is rapidly becoming urbanized and increasing in population. The District, in addition to managing a large groundwater basin and ten local reservoirs, holds contracts for the importation of water from the California State Water Project (SWP) and the San Felipe Division of the Federal Central Valley Project (CVP).

California, and Santa Clara County in particular, is now in its fourth year of drought. The District has been severely impacted by decreased local water supplies and by a 50% deficiency in its imported water supply entitlement from the federal CVP. Water rationing was first placed in effect in Santa Clara County in 1988 on a voluntary basis, but became mandatory in 1989 and 1990. Because of the current low storage levels in the CVP system reservoirs, it is very likely there will again be CVP water supply deficiencies during 1991 which could lead to another year of mandatory water rationing in our County.

The Warren Act of February 21, 1911 provided for the impoundment, storage, and conveyance (wheeling) of non-project water through Federal water project facilities for the purpose of irrigation (agriculture). A number of U.S. Bureau of Reclamation projects, including the San Felipe Division of the CVP, provide water for Municipal and Industrial (M&I) uses. However, these projects are precluded from wheeling non-project M&I water because of the absence of an appropriate provision in the Warren Act. We believe it was never the intent of Congress to specifically exclude the M&I usage. In 1911 when the Warren Act was passed, the Bureau of Reclamation was simply not providing water for M&I uses. It now is and the act should thus be amended.

THE DISTRICT'S WATER MANAGEMENT OBJECTIVE

A key to improving the overall management of our water supplies, both for over the long term and in meeting drought emergencies, is the ability to wheel non-project water through the facilities of both the SWP and the Federal CVP. This was dramatically illustrated in early 1989 when the Bureau projected a 50% deficiency in the District's CVP water supply entitlement.

In response to the projected water shortage, the District successfully negotiated the purchase of 90,000 acre-feet of water from Yuba County, north of the Sacramento-San Joaquin Delta, but has been unable to wheel any of this water through the Federal CVP facilities because of the Warren Act limitations. Consequently, all of the District's Yuba County water must be wheeled through the SWP facilities and is constrained by that system's capacity limitations and the delivery requirements of other SWP contractors. These limitations have severely narrowed our opportunities to wheel this emergency supply of water, resulting in a dramatic delay of water delivery and making it difficult to address crisis needs efficiently. This is occurring at a time when much of the CVP has surplus conveyance capacity as a result of the current 50% CVP deficiency.

Clearly there is a water management benefit to the District and its constituents to have the capability to wheel non-project M&I water through the CVP system. At the same time, the wheeling of non-project water through the CVP system would make more effective use of the existing Federal investment and increase the revenue to the United States Treasury through the charges provided for in Section 1 of the Warren Act.

While the District is fully prepared to enter into contracts with the Bureau in order to wheel non-project M&I water through the CVP system, we respectfully direct the Committee's attention to the original language under Section I of the Warren Act which remains unchanged under S. 2716. We request the Committee's assistance in directing the Bureau that in entering into such contracts with Federal contractors under this provision, to honor the original intent of the law and charge only those fees, ". . . as may be reasonably necessary to cover cost of carriage and delivery of such water through their works.", as is detailed in Section 1 of the Warren Act. Ensuring that this provision is adhered to will go a long way toward equitable treatment of Federal contractors and ratepayers who are currently repaying the cost of the system over a set period of time under individual contracts.

The water management benefits available under S. 2716 would apply not only to the current Yuba County water, which the District must take delivery of by March 31, 1991, but to future non-project water deliveries and exchanges between the District's SWP and CVP entitlements. Having the capability to wheel SWP and CVP water through either facility, when such capacity is available, improves both the flexibility and the reliability of both systems and results in more efficient use of limited water supplies state-wide as well as in Santa Clara County. The opportunities for water banking through the conjunctive use of the District's surface and groundwater supplies are also increased when nonproject water can be conveyed through Federal facilities. In addition, it would build upon the water transfer and marketing policies established and encouraged by the State. Providing these capabilities will help bring the Bureau's traditional mission up to date to reflect current needs.

CONCLUSIONS

The language contained in S. 2716 will enable us to accomplish the objectives and realize the benefits I have cited. I appreciate the opportunity to address you on this most important legislative amendment and encourage your endorsement of it.

Thank You.

El Dorado County Water Agency,
Placerville, CA. July 18, 1990.

Hon. Bill Bradley,
Chairman, Subcommittee on Water and Power, Committee on Energy and Natural Resources, U.S. Senate, Washington, DC.

Dear Mr. Chairman: I am writing on behalf of the El Dorado County Water Agency to respectfully request your support of S. 2716 introduced by Senators Cranston and Wilson. We understand your Subcommittee will consider this bill at its hearing on July 24, 1990.

S. 2716 would amend the Warren Act (Act of February 21, 1911, 43 U.S.C. 523 et seq.) to expand the purposes for which excess storage or carrying capacity in reclamation projects may be used. Enactment of S. 2716 would enable water agencies to store or convey nonfederal water in reclamation projects for other than irrigation purposes, including municipal, industrial, domestic, or miscellaneous purposes, including fish and wildlife purposes.

The El Dorado County Water Agency was created by an act of the California Legislature in 1959; the board of supervisors of the county serve as the ex officio board of directors of the agency. The Agency may do any and every lawful act necessary to ensure that an adequate water supply is available for any present and future beneficial use or uses of the lands or inhabitants within El Dorado County. The Agency is authorized to secure and defend the ownership or use of water or water rights on behalf of the lands or inhabitants in the county.

The Agency, in cooperation with the El Dorado Irrigation District, recently filed four applications to appropriate consumptive water rights by permit with the State Water Resources Control Board. The new water supply is needed to supplement existing district supplies in order to satisfy increasing demands due to population growth. The water sought by the Agency and District is available in existing Pacific Gas & Electric Company (PG&E) facilities. The ability to take delivery of the water, however, would be enhanced by utilizing excess storage and conveyance capacity in the Sly Park Unit of the Central Valley Project.

El Dorado Irrigation District currently contracts with the United States Bureau of Reclamation for water out of the Sly Park Unit, which is independent of any water service from storage, conveyance, or pumping facilities of the Central Valley Project. Utilization of the unit for the "PG&E" water could be easily accommodated through existing District facilities.

In closing, S. 2716 would (1) increase the efficiency of the reclamation project, (2) enhance an existing local distribution system, and (3) enable the Agency and District to increase dependable water supply without new dam, reservoir or conveyance facilities.

Thank you for your time and consideration.

Sincerely,

Robert J. Reeb, *General Manager.*

Prepared Statement of Carl L. Slingerland, New Mexico State Engineer, on S. 1932

This statement is submitted in support of S. 1932 which would amend Title IV of the Act of December 19, 1980 and would provide further relief to the Vermejo Conservancy District from its repayment obligation for the construction, operation and maintenance of the Vermejo reclamation project.

Congress in 1980 through Public Law 96-550, provided relief to the District by establishing a means by which the Secretary of Interior could defer the District's repayment obligation to the United States until such time as repayment was reasonably feasible for the District. P.L. 96-550 also provided for the transfer by the United States to the District those assets of the District the United States acquired when certain of the District's facilities, including Lake 13, were rehabilitated in the 1950's.

I am advised that the amendatory legislation is necessary to insure that Lake 13 is transferred to the District along with the other Vermejo Project facilities.

The District derives its water supply from two sources, Chico Rico Creek and the Vermejo River. The water rights of the District were adjudicated by the District Court of Colfax County in 1935 and 1941.

Lake 13 is the District's major storage facility for Chico Rico Creek water. Releases are made from Lake 13 to irrigate much of the 7400 acres of land in the Vermejo Project. The storage capacity of Lake 13 is 4,800 acre-feet, and is more than half of the District's storage capacity available for storing water from Chico Rico

Creek. In the recent past the District has suffered water supply shortages which has reduced the District's ability to grow crops on the Project lands and to meet its repayment obligation to the United States.

Lake 13 is a significant and integral part of the Vermejo Conservancy District's water supply and delivery system. The return to the District of all District facilities should greatly assist the District in its responsibilities for the operation of the water supply system, and enhance the District's ability to meet its repayment obligation.

The opportunity to present my views on S. 1932 is sincerely appreciated.

PREPARED STATEMENT OF CARL L. SLINGERLAND, NEW MEXICO STATE ENGINEER, ON S. 1590

This statement is submitted in support of S. 1590, which would authorize the Secretary of the Interior to transfer to the Elephant Butte Irrigation District of New Mexico, without cost to the district, title to such easements, ditches, laterals, canals, drains and other rights-of-way, which the United States has acquired on behalf of the project, that are used solely for the purposes of serving Elephant Butte Irrigation District lands and which the Secretary determines are necessary to enable the Elephant Butte Irrigation District to carry out operation and maintenance of the project in New Mexico.

The Elephant Butte Irrigation District has assumed the responsibility for the operation and maintenance of various parts of the project.

The project diverts water from the Rio Grande for the irrigation of about 90,000 acres of productive farmland in southern New Mexico.

The transfer of the title authorized by the bill will enable the Elephant Butte Irrigation District to carry out its responsibilities in an efficient and timely manner and should assist the District in the distribution and conservation of its limited water supply.

The opportunity to present my views on S. 1590 is sincerely appreciated.

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